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HISTORY
OF THE
GOVERNMENT
OF THE
ISLAND OF NEWFOUNDLAND.

WITH AN
A P P E N D I X;
CONTAINING
THE ACTS OF PARLIAMENT MADE RESPECTING
THE TRADE AND FISHERY.

BY JOHN REEVES, ESQ.

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L O N D O N:
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1793.

HISTORY

OF THE

PREFACE

OF THE

ISSUED OF NEWSPAPERS
AFTER my return from New

***I GIVE** the Profits of this Book for the Relief
of the suffering Clergy of France, Refugees in
the British Dominions; and I beg of Mr. Sewell
to undertake the Trouble of managing the Pub-
lication to the best Advantage for that Purpose.*

J. REEVES.



among the papers belonging to
the late board of directors, and I then
pursued the subject through the
Registers of the present committee
of council for trade and plantations.
I was very much struck with the
matter and reflections furnished by
this research; and I wished that the
use-

PREFACE.

AFTER my return from Newfoundland, in the year 1791, I was curious to look back into what had been done, in former times, on the subject upon which I had myself been just employed. I accordingly looked over the NEWFOUNDLAND ENTRIES, and the NEWFOUNDLAND BUNDLES, among the books which belonged to the late board of trade; and I then pursued the subject through the REGISTERS of the present committee of council for trade and plantations.

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use-

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useful information, which I had derived from this retrospect, might be seen by those, who had at that time to consider the subject of Newfoundland. Hence arose the present History; and as the same subject is now before the House of Commons, I have ventured to print it, and throw it among the other materials under examination.

If this public enquiry had not been instituted, the story here told would have been confined to the circle for which it was originally intended.

J. R.

April 1793.

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HISTORY

INTRODUCTION.

I INTEND to give a short history of the Government and Constitution of the island of *Newfoundland*. This will comprise the struggles and vicissitudes of two contending interests.—The *planters* and *inhabitants* on the one hand, who, being settled there, needed the protection of a government and police, with the administration of justice: and the *adventurers* and *merchants* on the other; who, originally carrying on the fishery from this country, and visiting that island only for the season, needed no such protection for themselves, and had various reasons for preventing its being afforded to the others.

This narrative will divide itself into four periods, or parts. The *first* will close with the passing of stat. 10 & 11. Will. 3. c. 25. by which the adventurers and merchants were supposed to have obtained a preference, and advantage over the pretensions of the inhabitants, and planters. The *second* will end with the appointment of a civil governor, and of justices of the peace in 1729; by which some stop was put to the disorder and anarchy that had long prevailed in the island, especially during the winter seasons. This may be considered as an advantage gained by the inhabitants and planters. The *third* closes with Stat. 15, Geo. 3. c. 31. commonly called in the island *Sir Hugh Palliser's act*, which was intended for giving an advantage to the fishery carried on from the mother country; but, as it obliges both merchants and planters to pay their servants' wages, it is equally abhorred by both parties; and both parties have shewn great readiness to join in asserting, that the fishery has gradually

dually decayed ever since the passing of this act. The *fourth* comes down to the year 1791, when a court of civil jurisdiction was established upon principles which, it was thought, would secure the impartial administration of justice to the merchant and the planter, the rich, and the poor, the master, and the fisherman.

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The first part of the paper is
devoted to a description of the
country, and the second part
to a description of the people.
The third part is a description
of the climate, and the fourth
part is a description of the
soil.

PART I.

Different Charters granted—Rules and Regulations of the Star Chamber—Of appointing a Governor—Additional Rules—Report against a Governor—Sir John Berry's Advice—Bye Boat-keepers, what?—Question of a Colony argued—Stat. 10. & 11. Will. 3. c. 25.

NEWFOUNDLAND, like other new discovered lands in America, was endeavoured to be settled, and improved by means of charters granted from the crown; it being hoped that individuals would, in this manner, be tempted to pursue the public advantage, through the medium of their private interest. Charters were granted at five different times. The first was in 1578 to *Sir Humphry Gilbert*, who had thereby full power given him to possess all lands in Newfoundland not in ac-

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Different Charters granted.

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tual possession of any Christian prince.

By virtue of this authority, he, in 1583, landed in *St. John's Bay*, and we are told, that calling together both English and strangers, then fishing, he took possession of the country in the queen's name, and erected the arms of England upon a pillar of wood, in testimony of her majesty's sovereignty.

The *second* charter was granted in 1610 by king James, to the *Earl of Northampton*, *Sir Francis Bacon*, and several others, by the name of *the Treasurer and Company of ADVENTURERS and PLANTERS of the City of London and Bristol, for the Colony in Newfoundland*, with all the usual prerogatives and immunities; but in this grant there was a reserve to all persons of an entire liberty to fish.

The *third* charter was granted to *Sir Geo. Calvert* (the grantee of the province of Maryland) and his heirs, of a tract of land called *the Province of Avalon*, lying to the south east point of the island, extending between ports *Fermose* and *Aquafort* to *Petty Harbor*, and from thence westward to the bay of *Placentia*. There was also a grant to him of the property of all islands lying within ten leagues of the eastern shore,

shore, together with the fishing of all PART I.
 sorts of fish, saving to the English the free
 liberty of fishing, salting, and drying of
 fish. From Queen Elizabeth to Stat. 10 & 11 Will. 3.

4 The fourth charter was granted in 1628, to the *Marquis of Hamilton*, the *Earl of Pembroke*, *Earl of Holland*, *Sir David Kirk*, and others; and under pretence that Lord Baltimore (the heir of Sir Geo. Calvert) and other proprietors, had deserted the plantation, this grant included the province of *Avalon*. In this grant it was provided, that no person should plant or inhabit within six miles of the sea shore between cape *Race* and cape *Bonavista*.

Thus far did the crown go in the granting of four exclusive rights in Newfoundland. But this detail gives us no information as to the constitution and regulation of the island, its trade and fishery. On this head we find, that in
 5 1615 Captain *Richard Whitburne* was sent out with a commission from the high court of admiralty, authorizing him to impanel juries, and to make inquiry upon oath, of fundry abuses, and disorders committed every year, among the fishermen upon that coast.

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Rules and regu-
lations of the
star-chamber.

In the year 1633, the star-chamber took up the subject of the fishery :—a petition and complaint had been there preferred by the merchants and owners of ships in the west of England; and that court, after taking the same into consideration, was pleased to issue the following order, for better regulating the trade—

If a man killed another, or stole to the value of forty shillings, the offender was to be brought to England, and the matter was to be tried by the Earl Marshal; and if the fact was proved by two witnesses, the offender was to suffer death.—No ballast was to be thrown out of ships to the prejudice of the harbours—no person was to deface or spoil any stage, cook-room, or other building—the ship that first entered the harbour was to be admiral—no person should deface or alter the marks of any boats, to defraud the owners—no person was to steal any fish, train, or salt, or other provision, belonging to the fishing ships—no person was to set fire to the woods, or rind the trees, except for cook-rooms—none were to cast anchor so as to hinder the haling of seines—none should rob the nets
of

of any drift boats—no tavern should be set up for the selling of wine, beer, strong water, or tobacco—the company were to assemble themselves on Sunday to hear divine service—the mayors of *Southampton, Weymouth*, and certain other towns, were to take cognizance of all complaints made against any offender upon land—the vice-admiral in the counties of *Southampton, Dorset, Devon, and Cornwall*, was to proceed against offenders at sea.—These laws were to be in force till they were annulled by his Majesty; and the admiral in every harbour of the island was to make proclamation of them.

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On the 20th of February following, a charter, being the *fifth*, was granted according to the tenor of this order; made by the star-chamber, to the *merchants and traders to Newfoundland*.

In the year 1650, the council of state gave a commission to *John Treworgay*, merchant, who was then in the island, to order affairs there for the best advantage of the state; which commission was renewed in 1653. A commission was also obtained in 1655 by Sir *David Kirk* (who had been one of the grantees in the charter of 1628), together

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ther with *John Claypole*, *John Goffe*, and others; but it does not appear that any thing was done thereupon.

After the restoration, *Lord Baltimore*, who had been dispossessed of the province of *Avalon*, by the charter granted to the Marquis of Hamilton and others, obtained orders in 1660, for a restitution of that province. And there was also on the 24th January 1660 a renewal and confirmation of the charter granted to the merchants and traders in February 1633; on which occasion this additional provision was made: "That no master or owner
" of any ship should transport any persons
" to Newfoundland who were not of the
" ship's company, or such as were to
" plant and settle there."

In support of this last provision, a letter was written on the 4th December 1663 by the lords of the privy council, enjoining the magistrates of the western ports to take care that no owners of ships, trading to Newfoundland, suffered any persons to be transported thither, other than such as were of the ship's company, and *the officers of his Majesty's customs* in the several ports therein
named

named directed, and to charge all masters of ships to observe this rule. In the 15th year of Charles II. the parliament made some regulation respecting this trade and fishery. By statute 15 Car. 2, c. 16, penalties are imposed on planters and others, who destroy the fry of fish, or burn or destroy boats left in the harbour, or pull down houses or stages built by the English to live in during the fishing season; and no toll is to be demanded for fish of English catching.

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In the year 1667, the fishery of Newfoundland underwent a more mature discussion than it seems before to have received. In August of that year several petitions, were presented to the privy council from the merchants, owners of ships, and others, inhabitants of the towns of *Totnefs*, *Plymouth*, *Dartmouth*, and places adjacent, concerned in the trade to Newfoundland. They stated, that several persons, upon specious purposes, and for sinister ends, were endeavouring to establish a *governor*, which had always been pernicious to the fishery; and because they were unable to attend or bear the charges of solicitation, and sending witnesses to such a distance, they

Of appointing a
Governor.

prayed

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prayed his Majesty to empower such persons of the county of Devon, as his Majesty should think fit, to hear and examine the whole matter, and make report thereof to the council. Upon consideration of these petitions, *Sir Edward Seymour*, *Sir John Northcott*, *Sir William Courtnay*, *Sir Thomas Carew*, *Sir Walter Young*, and other gentlemen of Devonshire, were appointed to enquire into facts concerning the miscarriage of former governors to the damage of the trade; and the petitioners were also required to prepare reasons to make good the allegations of their petitions. In consequence of which, depositions were taken at *Totness*, in which were certified the inconvenience of appointing a governor, and the prejudice that would necessarily thereby ensue to the fishery.

However, on the 6th December following, the company of merchants, adventurers, and owners of ships, trading from *Bristol* to Newfoundland, and several other merchants, petitioned his Majesty to provide a remedy to the dangerous condition of the fishery (which, they said, was likely to fall into the hands of the French), by
sending

fending some able person as *governor*, with PART I.
 guns, arms, ammunition, and other ma- From Queen
 terials, necessary for fortifying some of the Elizabeth to
 harbours. This matter was referred by Stat. 10. & 11
 his Majesty to the *Earl of Anglesey*, Lord Will. 3.
Ashley, Mr. Comptroller, Mr. Vice-Cham-
 berlain, and Sir William Coventry. These
 persons entered into an examination of all
 the papers, and also of sundry merchants
 and other persons; but no resolution
 appears to have been taken thereon till
 1669, when a Captain *Robert Robinson* pe-
 titioned for the settlement of a governor;
 and, on a reference of this question to the
 lords of the committee for trade and plan-
 tations, their lordships reported, after hear-
 ing several merchants and others concerned
 in the trade, "that they did not think fit
 "to recommend the petition and proposal
 "of Mr. Robinson for making him go-
 "vernor of Newfoundland; but, for keep-
 "ing people living there in Christianity,
 "they proposed that his Majesty should
 "send a chaplain in the convoy-ships;
 "and that the captains of the said ships should
 "have power to regulate abuses there, with
 "reference to his Majesty's letters patent
 "granted to the western towns;" which
 report

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report was confirmed in every thing by his majesty on the 4th of February following.

On the 25th of the same month, complaint was made, that many owners of ships carried out passengers, and private *boat-keepers*, contrary to the laws and constitutions of the fishery, to the great detriment of the fishing trade, and to the lessening of the number of ships and seamen; that many owners also victualled their ships from *Ireland*, instead of *England*. Upon which, an order of council was made, directing that the mayors and magistrates of the several towns mentioned in the above letters patent, should be careful that the constitutions were punctually observed; that the officers of the customs should charge all masters and owners of ships to put those rules in execution; should stop offenders therein from proceeding in their voyage, and immediately return their names to the council.

But, notwithstanding the objections made by many to the appointment of a *governor*, those very persons felt the need of government and regulation: for on the

23d of December 1670, a petition was presented to his majesty, from the western merchants and traders, "That additional powers might be granted for regulating the fishery." The lords of the council, appointed for matters of trade, upon this occasion recommended several rules; and his majesty ordered, that they should be added to the former charter. These were called *additional rules*, and were as follows.

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That his majesty's subjects might take bait and fish at Newfoundland, provided they submitted to the established orders—That no alien should take bait—That no planter should cut down any wood, or should plant within six miles of the sea shore.—That no inhabitant or planter should take up the best stages before the arrival of the fishermen.—That no master or owner of any ship should transport seamen, or fishermen to Newfoundland, unless they belonged to his ship's company.—That none should carry more than sixty persons for a hundred tons.—That every fifth man should be a green man, that is, not a seaman.—That the masters of ships should provide victual in England, according to the

Additional Rules.

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the number of men, for the whole voyage, salt only excepted.—That no fishing ship should part hence for Newfoundland, before the month of *March*.—That masters should give bond of a hundred pounds to the respective mayors of the western towns, not to carry to Newfoundland any of the sort of persons before prohibited, and to bring back such as they did carry out, or employed in carrying fish for the market voyages.—That no person should take up a stage with less than twenty-five men.—That no seaman or fisherman should remain behind, after the fishing was ended. It was ordered, that the admirals, vice admirals, and rear admirals should put these orders in execution, and preserve the peace.—Should bring to England offenders of any sort—Should proclaim on the 20th of September, yearly, his majesty's orders.—Should keep journals.—It was ordered that the recorders and justices of the peace of the several western towns, should be joined in commission with the mayors.—That reasonable fines should be imposed on offenders.

Finally, it was ordered, that a bill should
be

be prepared to pass the great seal, for the confirmation of the last *charter*, with these *additional* powers; and that the clause touching the marshal should be reviewed by Mr. Attorney General, who should present to the board *some way of judicature*, for the determining of causes at Newfoundland.

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In February 1674-5 the question of appointing a governor was again brought forward *. A petition had been presented, in which was set forth the great advantage that would attend the fishing trade, by a settlement under a *governor*; This was referred by the king to the lords of the committee for trade and plantations; and after hearing the reasons of the merchants and owners of ships in the west of England, who protested against a settlement, together with what the pe-

* While this was pending at the board, a letter was read at the committee from *Sir Lionel Jenkins*, touching the continuance of the king's sovereignty, in case the plantation were deserted; wherein is stated the advantage the French might take by the absence of the English, and the methods proper to be followed in such case, to maintain the king's dominion and sovereignty.

C

titioners

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Report against
a Governor in
1675.

tioners could allege in behalf of a colony, their lordships made report to his majesty, of their opinion thereon.

In this report it is stated, that for some late years, the fish had failed in Newfoundland; that the adventurers had lost many of their ships in the late wars, especially in that with Spain; and that the late wars had much diminished the hands which used to take fish: that the inhabitants and planters, who, contrary to their old charter, lived within six miles of the sea, had destroyed the woods, and continued to destroy whatever the adventurers left behind them; that they possessed early the places of greatest convenience, and, which was very pernicious, most of them sold wine, and brandy, whereby the seamen were withdrawn from their labor, and many seduced to stay in the place, while their families thereby became burthenome to their respective parishes at home. That the inhabitants lived scattered in five and twenty different harbors, almost eighty leagues asunder; and that in all the winter, when abuses were chiefly committed, there was no passing from one place to another, so that

that near forty harbours would have no government, though the governor were actually in the country.

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It is also stated, that besides the charge of forts, and a governor, which the fish-trade could not support, it was needless to have any such defence against foreigners, the coast being defended in winter by the ice, and in summer by the resort of the king's subjects; so that unless there were proper reasons for a colony, there could be none for a governor. That against a colony, there were not only the rigours of the climate, and infertility of the land, which obliged those who were there all the winter, to idleness, and inclined them to debauchery, but this, that they chiefly consumed the produce of *New England*, by the shipping of which country, they were furnished with French wine and brandy, and *Madeira* wines, in exchange for their fish, without depending, as they should, for supply from England; so that if the climate and soil should favour a colony, the planters would rather adhere to *New England*, and so go on to tread in the same steps as those colonists did, to the loss of the many advantages which, by the pre-

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sent method of things, are yet enjoyed by the mother country; there being no hope for a like regulation on the product of this place as on the products of the other plantations, because fish cannot bear the charge of coming home, but must go *directly* to the markets abroad.

It was reported that the French did not manage their fishery otherwise, than by adventurers' ships, that went out, and returned back yearly. That they maintained a fort at *Placentia* to defend them from the Indians, who, at certain times, came off from the main, and molested them in their beaver-trade; for which trade, and not for fishing, the French had a residence there.

It was reported, that the adventurers caught fish cheaper than the planters.

Upon full consideration of all these circumstances, their Lordships proposed, that *all plantations in Newfoundland should be discouraged*; and, in order thereunto, that the commander of the convoy should have commission to declare to all the planters, to come voluntarily away; or else
that

that the western charter should, from time to time, be put in execution; by which charter all planters were forbid to inhabit within six miles of the shore, from Cape Race, to Cape Bonavista. Their Lordships further proposed, that the *additional rules*, settled on the 10th of March, 1670, should be observed, and that the mayors of the western ports should be required to renew their charter accordingly.

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This report, from the Lords of the committee of council for trade and plantations was approved by his majesty, and order was thereupon given for carrying into effectual execution, what was there recommended.

In viewing these transactions we plainly discover the two contending interests in the Newfoundland trade; the one that of the planters and inhabitants, the other that of the adventurers and merchants; and we shall see, in the course of this history, that according to the views of these different description of persons, representations were at various times made to the government at home, for promoting

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ing or opposing regulations and establishments in the island.

Sir John Berry's
Advice.

An occasion soon offered for shewing this spirit. Sir John Berry was appointed to command the convoy for the ships trading to Newfoundland; and in pursuance of a special order of council of the 15th of April 1675, this commander laid before the committee of council for trade the state of Newfoundland, as he found it, in relation as well to the *planters* and *inhabitants*, as to the *western adventurers*; and it is worth remarking how different is the account given by this commander, from that lately made by the *adventurers*, and which had induced the committee of council to report in the terms we have just heard.

He says, that several disorders, attributed to the *planters*, were chiefly occasioned by the *adventurers' ships*.—That the *inhabitants* never sold their fish to those of *New England* for wine and brandy.—That the *adventurers' men* pulled down the *stages*, and *store-houses*.—And, that it was *their* fault, that the *seamen* were seduced

duced to stay in the country, for it was to save thirty shillings for their passages.

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This letter was read at the committee in the presence of several persons, who appeared there in behalf of the west country merchants, and who complained of the encouragement Sir John Berry had given the planters, contrary to his majesty's orders, and to the certain ruin of the adventurers' trade, for such would follow from the continuance of the inhabitants and bye boat-keepers. Upon which the Lords advised them to settle the *additional rules*, allowed by his majesty; and this, some time after, was accordingly put in execution.

Sir John Berry, at his return, attended the committee, where he repeated and confirmed what he had written, and assured their Lordships of the necessity of encouraging a colony in Newfoundland, if, not the French would take advantage by the intended removal, to make themselves masters of all the harbours and fishing places about the island, or would otherwise entice the English planters to come and settle among them,

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them, to the great prejudice of our fishery,

The struggle between the adventurers and planters now grew very violent. In 1676, *Johns Downing*, an inhabitant of Newfoundland, petitioned the king against the endeavours of the adventurers to pull down the houses, and burn the stages of the planters, in order to drive them out of the country. This complaint was referred to the committee of trade, where counsel were heard in behalf both of the adventurers and planters; and the committee having reported their opinion thereon, the king signified his pleasure, that the masters and seamen belonging to the fishing ships should not any ways molest the planters, upon pretence of a clause in the western charter, whereby, "No person was to inhabit within six miles of the shore," until his majesty should proceed to a further resolution concerning the fishery and plantation of Newfoundland. Direction was accordingly given, by order from his majesty, to the captains of the convoy ships, to make publication of his majesty's pleasure, that the planters should be permitted to continue

finue in the possession of their houses and stages, according to the usage of the last years, until further order. Moreover, that the state of the colony and trade might be better known, they were ordered to return answers to several *heads of inquiry* prepared by the committee for trade and plantations; and the following are the answers thereto sent by *Sir William Baul* from St. John's harbour, dated the 10th of September 1677.

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He says, the fishermen confessed, that of late years the planters had done no prejudice to the fishery; so that, when they returned, they found their stages in as good order as could be after a winter; so that they were not obliged to come sooner to the island for the purpose of repairing them—the planters affirmed, they did not meddle with any of the adventurers' fishing places, nor did they desire to do it, provided they might quietly enjoy the same room they had possessed for several years—the fishermen complained, that the planters took up the best places to cure their fish, did damage to their stages, and took possession of more than they had hands to manage—the planters affirmed,

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Will. 3.

ed, that it was impossible to live six miles from the sea-side, by reason of the barrenness of the country—the fishermen did not desire the removal of the planters, but only a better regulation—the planters could not keep a constant number of men or boats, unless they were supplied every year with servants from England—the planters did not take so much fish, proportionably to the number of men and boats they kept, as the fishers did, who were better artists; nor sell it so cheap, by reason of the greater wages they were obliged to give their servants—it was not possible for the planters to observe the charter punctually—the planters all sold drink contrary to their charter—the fishermen felled the trees, and employed six and seven stages for seventy men, contrary to the rule of their charter—the French managed their fishery generally by fish-ships from Europe, and their trade for fur was very inconsiderable—the French planters were very much encouraged by the governor, and had the same accommodation in their harbours as the fishermen had—the fishermen confessed the planters were of great use to them—the planters prepared materials for the fishermen against their coming, which otherwise could not be

be made ready without a great loss of time; they preserved in their houses the salt that remained of the fishery until the next season; and when shipping was wanting, the fishermen were glad to lodge their fish in a planter's house until the following year—in case the fishermen were visited with sickness, or were obliged to stay for their ships on their first arrival, they used the convenience of the planters' houses—when the fishermen wanted provisions, the planters supplied them out of their stores; or when they had an overplus, the planters bought it of them for fish.

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—Such were the answers given by the commander of the king's ships on this station to the first *heads of enquiry* concerning the trade and fishery. This method of enquiry was followed in after times; and the information it produced, in this first attempt, may be made useful matter of comparison.

In December 1677, the committee for trade and plantations, in pursuance of an order of council, that had been made on the petition of the western adventurers, made report, that notwithstanding a clause
in

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in the western charter, forbidding the transportation of any persons to Newfoundland, than such as were of the ships' company, the magistrates of the several western ports did permit passengers, and private *boat-keepers*, to transport themselves thither, to the detriment of the fishery; but they were of opinion this might, for the future, be prevented, if not only those magistrates, but the vice-admirals and officers of the customs, were strictly commanded to prevent this abuse.

Bye Boat-keepers, what.

The private boat-keepers here spoken of, or *bye boat-keepers*, as they otherwise were called, are described as persons who, not being willing or able to buy a share in a fishing ship, hired servants in the west of England, and carried them as passengers to Newfoundland, where they employed them in private boats to catch and cure fish; and after the season was over, they brought them back to England, or permitted them to take service with the planters, or on board the ships. These bye boat-keepers used to go over yearly in great numbers; but this practice being contrary to the western charter, and the king's express com-

command, begun now to be much dis-
used.

PART I.

From Queen
Elizabeth to
Stat. 10 and 11
Will. 3.

The above-mentioned representation against the bye boat-keepers was soon followed by a petition in behalf of the inhabitants of Newfoundland, praying generally, that nothing might be ordered to their prejudice. To bring this matter into full discussion, it was ordered by the king, that both the adventurers and planters should be heard by their counsel. And thus was the question of the convenience and inconvenience of a colony solemnly argued at the council. After which it was referred to the committee for trade, to propose some regulation between the adventurers and planters, which might consist with the preservation of the interest of the crown, and the encouragement of navigation and the fishing trade *.

Question of a
Colony argued.

It does not appear what report was upon this occasion made by the committee for trade; and I find no other proceedings of the government respecting this trade and fishery till after the year 1696,

* Newfoundland. Ent. in initio. Bund. in initio.

when

PART I.

From Queen
Elizabeth to
Stat. 10 and 11
Will. 3.

when the board of trade was instituted.—

In January 1697, the new board took up this among other subjects that came within their cognizance; but not before they were called upon by petitions and representations from the towns in the west concerned in this trade. These, like former petitions and representations from the adventurers and fishers, were calculated to advance their pretensions, in opposition to those of the planters and inhabitants, to deprecate the appointment of a governor, and to pray a convoy for the safety of the ships going out, either to *Portugal* for salt, or to Newfoundland, and to protect them in their return home, or in their voyage to market*. The report and representation made by the board on this occasion applied rather to the present defence of the place than to any matter of general regulation; and they at the same time expressed an opinion, that planters, in a moderate number, were at all times convenient for the preparation and preservation of boats, stages, and other things necessary for the fishery; but that they should not exceed *one thousand*†.

* Ent. A. 36 to 58.

† Ibid. 58. 68.

In the year 1698 was passed the stat. 10 and 11 Will. 3. c. 25. intituled, *An Act to encourage the trade to Newfoundland.* It does not appear what were the steps that immediately led to the passing of the act; but it appears, in the matter of it, to be founded on the policy of former times; and it is, in truth, little more than an enactment of the rules, regulations, and constitution that had mostly prevailed there for some time.

PART I.

From Queen

Elizabeth to

Stat. 10 and 11

Will. 3.

PART

P A R T II.

Mr. Larkin's Observations—Character of the fishing Admirals—Character of the Commanders—Want of Police—Opinion of the Board 1706—Representation 1708—For Sea Commanders to command at Land—Such Commission issues—Laws and Orders made at Newfoundland—Representation 1718—Claim of the Guipuscoans to fish—Of the Lands ceded by the French—A Salmon Fishery granted—Opinion on the 7th Sec. of Stat. 10 and 11 Will. 3.—Representation 1728—Recommends a civil Government—A civil Governor is appointed—Disorders of Newfoundland, and Conduct of the fishing Admirals during this Period—Complaints from the Merchants.

PART II.

From Stat. 10 &
11 Will. 3, to
A. D. 1728.

IT has ever been the disposition of the principal merchants in the west of England to extol the provisions of stat. 10 and 11 Will. 3. as the soundest policy that could be pursued in relation to the fishery. We know, after perusal of the former part of

of this historical enquiry, that there was always an opposition and jealousy subsisting between the *merchants and adventurers* PART II.
From Stat. 19
11 Will. 3. to
A.D. 1728. *on the one hand*, and the *planters and inhabitants* on the other; and the utmost credit we can give to the former, on this subject, is to believe, that this statute fully established their claims and pretensions, and gave them an ascendancy over the latter; and that they now saw sanctioned by parliament, what before depended upon a tenure of less validity. So far, and no farther, can this eulogy have a meaning; for as a scheme of regulation, that was to be generally beneficial, this act was, in the first place, no novelty; in the second place it seems never, from the very beginning, to have been completely executed; and thirdly, it gave power and jurisdiction to hands that were unfit to exercise it: and I shall presently shew, that those concede too much, who allow this act might have been a very good regulation at the time it passed; for it will appear from the best authority, that, at the very time it was passed, it was in no way of being carried into execution as the parliament intended.

D

To

PART II.

From Stat. 10
and 11 Will. 3.
to A. D. 1728.

To the *heads of inquiry*, which were delivered and given in charge to the commodore, who commanded the ships on that station, this act, and all the particulars of it, were now added; and there appear in the returns made thereto every year, their observations and opinion, both upon the act and its execution. Upon such a subject there cannot be adduced better authority than this. In the answers given to these *heads of inquiry*, and in the correspondence of the commodores, may be traced, from time to time, the actual state of the fishery; and it will be curious to bring together the information that may be collected from these sources. Among the earliest information of this sort, I find a letter from *Mr. George Larkin*, written from St. John's in the year 1701. This was recently after the passing of the act; and the writer goes more fully into many points of the trade, than the officers of government usually did. These circumstances make this a valuable paper; and it becomes much more so, when it is considered, that *Mr. Larkin* was a gentleman bred to the civil law, who was sent out to make observations in the American settlements, for the information of government at home, as to

to

to the state of the Plantations, and the execution of the laws of trade and navigation.

PART II.

From Stat. 10
& 11 Will. 3, 10
A. D. 1728.

He begins by saying, that the rules and orders of this act were not so much regarded as he could wish, which he ascribes to there being no penalties in it. The trees were rinded, and the woods destroyed, as much as before passing the act; and in a few years, he thought there would not be a stick left fit for the use of the fishery within five or six miles of that, or other harbours. The flakes that were left standing, were most of them made use of by the inhabitants for firing in the winter.

Mr. Larkin's
Observations in
1701.

He says, the then admiral of the harbour of St. John's, *Captain Arthur Holdsworth*, of Dartmouth, brought over from England, that fishing season, two hundred and thirty-six passengers, all or great part of which were *bye boat-keepers*, and they were brought, under a pretence of being freighters aboard his ship, though it was only for some few provisions for their necessary use. These persons he had put and continued in the most convenient stages, &c. in the harbour, which all along, since the year 1685, had belonged to fishing ships;

D 2

in

PART II. in so much, that several masters of fishing
From Stat. 10 & 11 Will. 3. to A. D. 1728. ships had been obliged to hire rooms of
the planters. These bye boat-keepers
were most of them, he says, able fisher-
men, and there was not one fresh man, or
green man, amongst them, as the act re-
quires. He says, that this person, and
one or two more, who constantly used the
fishery, made it their business in the begin-
ning of the year, to ride from one market
town to another in the west of England,
on purpose to get passengers; with whom
they made an agreement, that in case they
should happen to be admirals of any of
the harbours, they would put and continue
Mr. Holdsworth, and such persons, in
fishing ships' rooms. This, he says, was
a very great abuse and discourage-
ment to the adventurers: besides, these
bye boat-keepers could afford to sell
their fish cheaper than the adventurers,
which must lessen the number of fishing
ships.

There was great complaint of the *New
England-men*, who for seven or eight
years, he says, had resorted to Newfound-
land. They had also their agents in most
of the harbours, and drove an indirect
trade,

trade, supplying several commodities to the planters, which they ought to take from England. Such New England vessels generally made two or three trips in a year, with bread, flour, pork, tobacco, molasses, sugar, lime-juice, and rum. They sold cheaper in general, but obliged their purchasers to take certain quantities of rum. This the inhabitants sold to the fishermen, and so encouraged them to stay behind, and leave their families in England a burthen on the parish. The inhabitants also sold rum to their servants, who run in debt, and were forced to hire themselves in payment of their debt; so that one month's profuse living, and a pair of shoes, often left them in bondage for a year; and good fishermen, who deserved fifteen or twenty pounds per annum, were thus made to serve for seven pounds. He says, the *New Englanders*, at the close of the year, used to inveigle away a great many seamen and servants, with promises of great wages; but these men were often disappointed, and turned robbers and pirates. The New England vessels were said, the last year, to have taken away five hundred men in this manner, in *Conception Bay* only; many of these were headed up in casks to prevent discovery.

PART II.

From Stat. 10 &
11 Will. 3. 10
A. D. 1722.

PART II.

From Stat. 10-
& 11 Will. 3. to
A. D. 1728.

discovery. He recommends, for preventing this practice, that the masters of New England vessels should give bond, when they cleared out, not to bring men from Newfoundland without leave from the commodore.

We find, in after times, the captains of the king's ships used to oblige every New England master of a ship to give such bond, in a penalty of five hundred pounds, with two sureties in two hundred and fifty pounds each, not to carry any persons out of the island.

As to the fishery, he did not hear of more than one New England vessel fishing on the coast. Indeed it appears, that *their* fishery was all carried on upon their own coast, where they had better fish, and that they looked to Newfoundland for nothing but the sort of traffic above-mentioned.

He informs us, that the inhabitants and planters of Newfoundland were poor, indigent, and withall a profuse sort of people, that cared not at what rates they got into debt, nor what obligations they gave

gave, so they could have credit. But the feizing of their fish for debt, seemed to this gentleman to be both irregular and unjust, as to the time and manner of doing it; for the fishermen seeing the flakes stript before the fishing season was half over, were discouraged from proceeding any further; which often proved the ruin and overthrow of several planters' voyages.

PART II.

From Stat. 10
& 11 Will. 3. to
A. D. 1728.

Debts used not to be paid till the 20th of August; but, for two and three years, he says, the flakes had been stript by night, and the fish carried off in June and July, without weighing. A second had come, and taken it from the first—the planter had had twenty or thirty quintals of fish spoiled in the scuffle, and the rest of his creditors were forced to go without any satisfaction. The poor fishermen, who helpt to take the fish, had, on these occasions, gone without one penny of wages—salt provisions and craft being always payable before wages; and he expresses astonishment, how the planters and inhabitants could procure hands from England to fish for them, considering how ill they used them.

PART II.

From Stat. 10 &
11 Will. 3. to
A. D. 1728.

Character of the
fishing admirals.

Where complaints of this sort had been made to the commander-in chief, he had ordered them to re-deliver the fish, and a dividend to be made. But there being five or six and twenty different harbours, besides coves, and it being a great distance from *Bonavista* and *Fermose*, to *St. John's* to make complaints, the commander could do little; and the admirals, he says, did not concern themselves at all, but left all to the commander. These admirals, says he, ought to see to the preservation of the peace and good government among the seamen and fishermen, that the order and regulation of the fishery be put in execution; and they should keep journals: but instead of this, they were the first to break these orders, and there was not one of them, where *he* had been, who had kept any journal at all.

He observes, that the late act of king William gave the planters a *title*, and it was a pity but that they had some laws and rules by which they should be governed; though, he says, it was the opinion of all, since he had come there, that it had been better, if all plantations had been discouraged, for the island was then become

come a sanctuary and place of refuge for all people that broke in England. Besides, the masters of the fishing ships encouraged several of their men to stay behind, persuading them they would soon get estates there; and this they did merely to save the charge of their passage back to England.

PART II.

From Stat. 10 &
11 Will. 3. to
A. D. 1728.

It had been customary for the commander in chief, upon complaints made, to send his lieutenants to the several harbours and coves, to decide all differences and disputes that happened between masters of merchant ships and the inhabitants, and between them and their servants; this gentleman declares it a shame to hear how matters had been transacted upon such occasions. He that made a present of the most quintals of fish, was sure to have the determination in his favour. He says, the whole country exclaimed against the lieutenants in *Captain Poulton* and *Captain Fairbourne's* time; and did not scruple to declare, that some former commanders in chief had been a little faulty. He says, the then commander, *Captain Graydon*, had taken much pains to do the country justice, and to settle religion

Character of the
Commanders.

PART II. **ligion** amongst them, and people seemed well satisfied with him. He says, there had never been any registry kept of the *orders* or *rules* that had been made for the good of the fishery. What one commander in chief had established, another had vacated; he says, he had prevailed with the present commander to leave an abstract of all such as had been made during his time.

From Stat. 10 &
11 Will. 3. to:
A. D. 8728.

Want of Police.

He says, that quarrels and disputes happened after the fishing season was over; and in the rigour of the winter season, masters beat servants, and servants their masters. He therefore recommends, that one of the most substantial inhabitants should be appointed in every harbour in the nature of a justice, for preservation of the peace, and tranquillity among them; and that some one, who understood the law, should be sent with the commander in chief, or should reside there, as should be thought most convenient, in the nature of a judge advocate, to decide all differences, and matters of *meum* and *tuum* between masters of ships, inhabitants, planters, and servants; that this person should have power to administer an oath to parties, or witnesses,

witnesſes, for determination thereof in the moſt ſummary way, and that he ſhould be obliged to go every year to the following places; viz. *Bonavilla, Trinity, New Perlican, Old Perlican, Carboneer, St. John's, Bay of Bulls,* and *Ferryland*, and to ſtay a fortnight or three weeks at each of them. He adds, that ſuch a perſon would be uſeful there for ſeveral purpoſes, and among others, that a true account might be had from him, how all matters were tranſacted at Newfoundland *.

PART II.

From Stat. 10 &
11 Will. 3. to
A. D. 1728.

The picture here given of Newfoundland is hardly heightened, or varied by any colouring to be found in the representations made by ſucceſſive commanders. They are uſually in the ſame ſtrain.. The grievances and complaints, the remedies and expedients are uniformly the ſame; and it is a remarkable circumſtance in the hiſtory of this trade, that many of the papers relating to it, whether coming from the commanders, or from the merchants and adventurers, in the times of king William and Queen Anne, would apply to

* Entries A. 447.

later

PART II. later times, as well as to those in which they originated.

From Stat. 10
& 11 Will. 3.
to A. D. 1722.

The *heads of enquiry* given in charge to the commanders, and the answers returned by them thereto, would furnish a history of the fishery. These heads soon encreased from twenty or thirty, to sixty or seventy. It is not my intention to go over all these, or to pursue every point that has arisen, at various periods, with relation to this fishery and trade; but principally to trace the progress made in affording that island some sort of *constitution*; and the settling of this, like the settling of all other constitutions, will involve in it the parties, and different interests that have, and still continue to prevail amongst the individuals concerned in the trade, both here and in Newfoundland.

In the answers made by Captain Graydon, the commander, at this time, we find, that a survey was made that year of all the encroachments made by the inhabitants upon the liberties of fishing ships, since the year 1685, and they were all corrected, as appears from him.—That the admirals of the harbours were the persons, who
 , mostly

mostly brought bye boat-keepers, and ^{PART II.} put them in possession of ship's rooms, under notion of their being freighters (as ^{From Stat. 10 & 11 Will. 3. to A. D. 1723.} was before alledged) the admirals advancing them money in England at five shillings in the pound.—The admirals did not observe the rules prescribed in the act of parliament, but on the contrary, when they wheedled a poor planter into debt, they took his fish by force from him, and would even break open his house to get it. As to the admirals keeping journals, accounts, &c. he found but four of them *capable* of doing it.—The admirals, before the 20th of August, used to hear some complaints, but after that, none were made to them, they being generally the greatest aggressors themselves.

Such are the observations made upon those points, that are more particularly for our consideration at present. We shall find, as we go on, how uniform were the complaints of abuses, and irregularities in the police and government of the island.

In the year 1702, the war with France broke

PART II.

From Stat. 10
& 11 Will. 3.
to A. D. 1728.

Opinion of the
Board 106.

broke out, and our fishery and concerns there were greatly disturbed by the French. During this, the questions agitated at the board of trade mostly concerned the defence of the island by sea and land. Notwithstanding this state of war, an order was made by the House of Commons, the 16th of January 1705-6, for laying before the house a state of the trade, and fishery; a state was for this purpose drawn up by the board; in this they give their opinion upon the different abuses and grievances; and, amongst other things, recommend that power should be given by parliament to the commanders of the queen's ships, and to the admirals, to inflict fines and penalties on the breaches of Stat. 10 & 11 Will. 3, c. 25. they recommend also, that the commanders of the queen's ships should have the power of custom-house officers to search ships from *New England**—In the same year they recommended to her majesty, that the mayors of the towns in the west, should be written to, requiring them to enjoin the masters of ships, who might become admirals, to keep journals, and dis-

* Entries, C. 104, 105, 106.

charge

charge the other duties required of them
by Stat. 10 & 11 Will. 3. c. 25*.

PART II.

From Stat. 10 &
11 Will. 3. to
A. D. 1728.

The board were called upon again the next year by the House of Commons for a state of the trade †, which was accordingly furnished, and in this statement the same abuses were recounted and the same remedies were suggested for their correction.

On the 31 of March 1708, the House of Commons addressed her majesty, beseeching her to give directions, that the laws relating to the trade and fishery of Newfoundland might be effectually put in execution against such commanders of her majesty's ships of war, or forts, or fortifications there, as should presume to exact, demand, or receive sums of money, or other rewards from any of the queen's subjects, in their voyages, trade, or fishery to, from, or at Newfoundland: And that such commanders and officers should be strictly forbidden to keep, use, or employ any fishing boats for their own private use or advantage: further,

* Entries, C. 208.

† Ibid. 341.

that

PART II.

From Stat. 10
& 11 Will. 3,
to A. D. 1728.

that the laws relating to the fishery should be duly executed*. This address was occasioned by some complaints made against a *Major Lloyd*, who commanded the troops at *St. John's*; but of this gentleman's conduct there were different accounts; the most unfavourable seem to have prevailed with the House of Commons to come to this resolution.

This call for a due execution of the laws relating to the fishery, again drew the attention of the board of trade to the Stat. 10 & 11 Will. 3, c. 25. and the defect, so often complained of in that act, "not having any penalties specially annexed to the breach of it." And on a question proposed by the board to Mr. *Montagu*, then solicitor general, he declared it to be clear, that although no particular penalty was mentioned in an act of parliament, requiring or prohibiting any thing, yet any offender against such act may be fined at the discretion of the court, when found guilty on an indictment or information†.

The board then proceeded to make a

Entric D. 30.

† Ibid. 33.

repre-

representation to her majesty on the occasion of the before-mentioned address ; in which they say, that no complaint had ever come to them of exactions, or demands made by commanders of the queen's ships ; and if there were, the offender should be prosecuted on Stat. 15 Car. 2. c. 16. That the charge against *Major Lloyd*, for letting out the soldiers to work in the fishery, was under examination at the board. But that for preventing any misconduct of officers with relation to the fishery and trade in future, they recommended, that the commodore, during his stay there, should have the command at land, as he used to have from the first sending out of a garrison, till within the last three years, when that practice was discontinued. They thought this would contribute better to support good order and peace, in a place where no regular civil government was established ; and that it would enable him to superintend the queen's stores, and to make better returns of the state of the trade and fishery. As to the execution of the act in general, they stated the abuses and irregularity subsisting in the island ; the ignorance and partiality of the fishing

PART II.
From Stat. 10
and 11 Will. 3.
to A. D. 1728.
Representation
1708.
For the sea commanders to
command at
land.

E admirals ;

PART II.

From Queen
Elizabeth to
Stat. 10 & 11
Will. 3.

admirals; and they recommended that the commodore should be empowered to redress and punish all offences, and abuses committed at Newfoundland against Stat. 10 & 11 Will. 3, c. 25.; as to those which he could not redress, they recommended he should inform himself whether the provisions of the act were duly complied with, and who were the offenders against them, in order that they might be proceeded against in this kingdom. They submitted whether it would not be proper to issue a royal proclamation for better observation of this law *.

This representation was approved by the queen, and an order of council was made on the 20th of May 1708, directing a proclamation of the sort therein recommended, to issue; and also a commission to be prepared annually by the Lords Commissioners for trade and plantations, for the commodore of the Newfoundland convoys, to command at land, during his stay in those parts, with such further *instructions* for putting in execution that act of parliament, as were set forth in the re-

* Entries, D. 34.

presentation;

presentation; the Lords were also directed to prepare a letter to *Major Lloyd*, disapproving his proceedings, and requiring him to yield due obedience to the commodore's commission: all which was accordingly carried into execution*. *Instructions* were delivered to the commodore for executing this commission to command at land; and in one of those he was directed to send answers to the *heads of enquiry*, which had long been in use, relating to the trade and fishery, and which were always prepared by the board of trade, and afterward given in charge to the commander by the lord high Admiral.

PART I.
 From Stat. 10
 & 11 Will. 3. to
 A. D. 1728.
 Such commission
 issues.

This change in the command at Newfoundland set the lords of trade upon an enquiry after the commission (before noticed) given in 1615 to *Captain Whiteburn* out of the court of admiralty for impanelling juries†. It seems also, that it was in agitation for the commissioners of the customs to appoint an officer for preventing illicit trade in Newfoundland. The lords of trade were informed from the custom-house,

* Entries, D. 44 to 54.

† Vid. Bund. I. No. 75. vid. ant. p. 7.

PART II. that when a court of admiralty should be erected, and a person appointed to hear and determine causes on informations of seizures, a revenue officer should have his commission and instructions.

From Stat. 10
& 11 Will. 3, to
A. D. 1728.

But the French had got so strong, and had so disturbed our possessions in the island, that every thing gave way to plans of immediate and necessary defence. Through the year 1710, the merchants were making representations to the board of trade, beseeching, that in any treaty of peace with the French, Newfoundland might be reserved wholly to the English. This idea was adopted by the board, and they appear to have pressed it strongly with her Majesty's ministers*.

Laws and orders made at Newfoundland.

In the year 1711, I find, what is called, *a record of several laws and orders made at St. John's for the better discipline and good order of the people, and for correcting irregularities committed contrary to good laws, and acts of parliaments, all which were debated at several courts held, wherein were present the commanders of merchants' ships, merchants,*

* Entries, 142, 144, 147.

and,

and chief inhabitants; and witnesses being PART II.
 examined, it was brought to the following From Stat. 10 &
 conclusion between the 23d day of August and 11 Will. 3, to
 23d day of October 1711. Then follow A. D. 1728.

fifteen articles of regulation*, that must have been very useful; and it is worth considering whether such a local legislature, which the people seem in this instance to have created for themselves, might not legally be lodged somewhere, for making bye-laws and regulations, as occasion should require. The commander *Captain Crowe*, presided at this voluntary assembly. His successor, it seems, followed his example, and held a meeting of the same sort. These assemblies were somewhat anomalous, a kind of legislative, judicial, and executive, all blended together†; and yet perhaps not more mixed than the proceedings of parliaments in Europe, in very early times.

At the peace of Utrecht we were put into possession of Newfoundland in a way we had not enjoyed it before, for some years. Placentia, and all the parts occupied by the French, were now ceded to the king of Great

* Engries, D. 249.

† Ibid. 272.

PART III. Britain, in full sovereignty; the French retaining nothing more than a licence to come and go during the fishing season. A new prospect now opened; and the government, not less than the merchants, turned their thoughts to that trade with a spirit that promised itself all the fruits of this new acquisition. A *Captain Taverner* was employed to survey the island, its harbours, and bays; a lieutenant-governor was appointed to command the fort at *Placentia*; the merchants beseeched the board of trade that the French might be strictly watched, and kept to their limits, and that a ship should go round the island, to see they left the different harbours at the close of the season.

Captain Taverner, who had great experience in that trade, and was much attended to at this time, gave in to the board some remarks on the Newfoundland fishery and trade; and also heads of a proposed act of parliament*. It appears from the observations made by this gentleman, as well as many others, that nothing was more strongly expressed by all persons,

* Entries, D. 337

who

who shewed any anxiety, or experience on this subject, than the inefficiency of Stat. 10 & 11 Will. 3, and the necessity of going to parliament for new regulations.

PART II.

From Stat. 10
and 11 Will. 3.
to A. D. 1728.

It had become a doubt, whether that part of the island, lately ceded by the French, was subject to the provisions of Stat. 10 & 11 Will. 3. This point was brought forward, in consequence of the lieutenant-governor of the garrison at *Placentia*, and some of the French planters having, on leaving the place, disposed of their plantations for money, and, in this manner, attempted to convey a right and property, which was not recognised by the general usage of the island, as confirmed by that statute. This matter was brought before the board of trade, and their lordships were of opinion, that Stat. 10 & 11 Will. 3. extended to the ceded lands, and that all the beaches, and plantations there, ought to be left to the public use, and be disposed of, as directed by that act*. Instructions to that effect were accordingly given to the lieutenant-governor of *Placentia* †.

* Entries, D. 406, 408.

† Ibid. 462.

PART II.

From Stat. 10 &
11 Will. 3, to
A. D. 1728.

Among the proposals and suggestions for improving the trade of Newfoundland, some papers from *Mr. Campbell*, in the year 1714 are deserving of notice *.

The Newfoundland trade was taken up by the government in the year 1715, as an object of important consideration. *Captain Kempton*, then on that station, was specially charged to make enquiry, and report every information he could acquire; and I find a very long letter written by him to the secretary of the admiralty, and transmitted from thence to the board of trade. This letter is very full, and was submitted by the board to the king's government, as containing suggestions highly deserving consideration †. The board were now satisfied that some new regulation ought to be made by parliament; and preparatory thereto, they resolved to write to the towns in the west, concerned in this trade, desiring them to furnish such information as they possessed upon a subject where they had so much experience ‡. They also laid a case before

* Entries, D. 480, 496.

† Entries, E. 124, 126. ‡ Ibid. 154.

the attorney general, *Sir Edward Northey*, PART II.
 for his opinion on the defects of Stat. 10 & From Stat. 10
 11 Will. 3. and he was of opinion, that it & 11 Will. 3. to
A. D. 1728.
 would be necessary, in order to oblige the
 observation of the rules contained in that
 statute, for a new act to be passed, in-
 flicting *penalties* for not observing the same,
 and directing how and where such penal-
 ties should be paid; and he thought that
 a proclamation, requiring the observance
 of those rules (as was before proposed)
 would have no effect *. On this occasion
Mr. Taverner suggested his remarks, and
 gave a sketch of a bill †. After the board
 had derived the information that was to
 be obtained from the different sources,
 where they had applied, they drew up a
 long *representation* to his majesty, dated the
 2d of March 1715-6 containing their opi-
 nion upon the abuses, suggesting the
 remedies that would be proper to be ap-
 plied ‡, and recommending that a bill
 should be proposed to parliament for
 giving effect to the suggestions there
 made.

* Entries, E, 164.

† Ibid. 204.

‡ Ibid. 241, 242.

Nothing

PART II.

From Stat. 10
& 11 Will. 3. to
A. D. 1728.

Representation
1718.

Nothing was at that time done ; but the board continued to pursue the course they had taken for obtaining information : for in August 1718, we find a very full answer given in by *Captain Passenger* upon the whole of the subject of the trade and fishery ; and in December following, the board made a *representation* to his majesty, more elaborate, full, and comprehensive, than any performance that had yet been seen, respecting this trade and fishery ; and to this they afterwards added the *heads of a bill*, to be proposed to parliament, for establishing the trade and fishery, and correcting the abuses to which it had been subject *. This representation, and the heads of the bill, have been lately laid before the house of commons, and are now printed by their order.

Claim of the
Guipuscoans to
fish.

About this time, the *Guipuscoans* had set up an antient right to fish at Newfoundland ; and application had been made to our court for asserting and allowing this claim. This matter was referred to the board of trade ; and that board did, on the 11th of September 1719, make a *representation* to the lords justices ; in which

* Entries, E. 416.

they

they say, that by the fifteenth article of PART II.
the treaty of *Utrecht*, the *Guipiscoans* could From Stat. 10 &
11 Will. 3. to
A. D. 1728.
claim no right, but such as they could
make out by some prior title; they then
recapitulated the ancient history of our
discovery and possession of the island; and
that by stat. 10 and 11 Will. 3. all aliens
are expressly excluded from the fishery;
and they conclude, that the island and the
fishery are the undoubted property of his
majesty, and that the *Guipiscoans* had no
manner of right to fish or trade there*.
They take this occasion to remind the
lords justices of the representation they
had made last year, and of the heads of a
bill then suggested for better regulating
the fishery.

The parts that had been surrendered Of the Lands
ceded by the
French.
by the French, occasioned in various ways
great contest and discontent. We have
before seen, that it was the opinion of the
board, that those parts fell under all the re-
gulations of the stat. 10 and 11 Will. 3.;
and this was confirmed by the opinion of the
law officers. Another difficulty arose, in
consequence of an agreement made by the

* Entries, E. 512.

PART II.

From Stat. 10 &
and 11 Will. 3.
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Queen with the king of France, which went beyond the terms of that treaty of Utrecht.

The French were by the treaty allowed to remain and enjoy their estates and settlements, provided they qualified themselves to be subjects of Great Britain—those who would not do this, had leave to go elsewhere, and take with them their *moveable* effects.

Queen Anne, in consideration of the king of France releasing a number of protestant slaves out of the galleys, permitted the French inhabitants of *Placentia*, who were not willing to become her subjects, to sell their *houses* and *lands* there. It became therefore a *question*, whether this permission of the queen was valid, so as to dispose of *lands* which came to the crown by treaty. This point was submitted to *Mr. West*, counsel to the board of trade, for his opinion; and it was material to settle it, because many British subjects had purchased such lands from the French inhabitants.

His answer was, that the queen could not by her letter dispose of lands granted to the crown by treaty; but if she entered into any regular agreement with the court of France for that purpose, she was, by the law of nations, engaged to do every thing
in

in her power to enable the French to have the benefit of it; which might be done by her confirming titles to such of her subjects as should pay the French a consideration in money, or otherwise, for their lands or houses*. Many such lands purchased by *Governor Moody*, having been used for fortifications, the board recommended compensation to be made him by the crown.

PART II.

From Stat. 10
and 11 Will. 3.
to A. D. 1728.

But when this question was so answered, what became of the right to ships' rooms, as established by stat. 10 and 11 Will. 3. which statute was held to apply to the French parts now ceded, as well as to the other? *Placentia* being the best part for fishing, the English complained they were deprived of the benefit they had promised themselves, by this new acquisition, as they could not resort thither, without paying high rents for a plantation to cure their fish. In truth, many French still continued there, and they gave encouragement also to *Biscayans*, and to the people of *Guipuscoa*, who, we have seen, were starting a pretension to fish at Newfoundland, of right. All these together constituted a

* Bund. M. 99.

PART II. source of great discontent, and so continued for several years *.

From Stat. 10
and 11 Will. 3.
to A. D. 1728.

A Salmon Fish-
ery granted.

Another question, as to the right of property at Newfoundland, arose upon a *salmon fishery*, which had been carried on and improved by *Mr. Skeffington*, between *Cape Bonavista* and *Cape John*, in a part never frequented by any fishing ships; he had cleared the country up the rivers for forty miles, and had built houses and stages. This person applied for an exclusive grant of this fishery for a term of years;—the matter being referred to *Mr. West*, he reported, that such a grant would not be inconsistent with the stat. 10 and 11 Will. 3 †. The board accordingly recommended to his majesty, that a term of 21 years, in a sole fishery for salmon, in *Fresh-water Bay*, *Ragged Harbour*, *Gander Bay*, and *Dog Creek*, might very well be granted by his majesty, with liberty to cut wood and timber in the parts adjacent, provided it were at six miles distant from the shore ‡.

In the close of the year 1728, we find the

* See Captain Taverner's Remarks, Feb. 1715-16.
Bund. M. 15.

† Bund. M. 98. ‡ 8th April 1723. Ent. F. 36.

board

board of trade once more took up the subject of this trade and fishery, in consequence of the representations made by *Lord Vere Beauclerk*, the commodore on that station. In order to bring the subject under full discussion, they caused letters to be written to the chief magistrates of the different towns in the west, requesting the merchants to send their thoughts, whether any thing, and what, might be done for the further encouragement of the fishery.

PART II.

From Stat. 10
& 11 Will 3. to
A. D. 1728.

With a view of understanding the situation and tenure by which persons held their lands in Newfoundland, the board referred, at this time, a question to *Mr. Fane* on the seventh clause of stat. 10 and 11 Will 3. “Whether the possessors had an inheritance therein, or only an estate for life?” and he was of opinion, that by the words of this clause, an estate for life only passed to the possessors, and consequently a right of alienation only for that interest, for the following reasons:—1st. From the general rule of law, that the king’s right and interest can never be bound by general words—2dly. From the inconvenience that would ensue, if by these
general

Opinion on Sec.
7, of Stat. 10
and 11 Will 3.

PART II.

From Stat. 10
and 11 Will. 3.
to A. D. 1728.

general words an estate of inheritance should be construed to be given; for these houses, &c. might fall into hands improper for carrying on the fishery, or be bought by such as are in the interest of our enemies; or such new erections, houses, &c. might be purchased by one person, or two, and so an engrossing established, against the design and intention of the act—3dly. From the words of the clause, which seem to confine the possession to the builder; for the act says, *to HIS or THEIR use*; which implies, as he apprehended, that this is only a personal privilege; and a privilege it was sufficient, to have an estate for life in a house, &c. probably slightly built; and which, in all likelihood, would only last for the life of the builder—4thly. This act was made, he apprehended, in disfavour of the Newfoundland-men; and it could not be supposed such a favourable provision, in this instance, would be made for them, when they were discountenanced in every other clause of the act; especially too against the right and interest of the crown, which, in all doubtful cases, must be preferred*.

* December 19th, 1728. Bund. O. 34.

The letter to the mayors of the western towns produced only two answers; one of which consisted of a complaint against Colonel Gledhill, the lieutenant governor of *Placentia*, for encroaching upon the fishing rooms, engaging in the fishery, and using his power in an illegal and arbitrary manner; the other complained of the illicit trade of the *New England men*. Not the least advice was given as to any mode of correcting irregularities, nor was any thing said as to the want of order, and good government. The board were, therefore, left to take such course as they in their wisdom should think proper. They accordingly proceeded on such evidence as they had, and drew up a representation to his majesty, dated the 20th of December 1728. In which they declare, " That

" the want of sufficient power in the com-
 " modore for enforcing the act of par-
 " liament, and the general contempt, into
 " which the authority vested in the fishing
 " admirals had fallen, had reduced the
 " fishery to a very bad condition; and,
 " unless proper remedies were applied, in
 " all probability we should entirely be
 " deprived of the advantages derived by
 " the nation from this trade."

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From Stat. 10
 & 11 Will. 3, 60
 A. D. 1728.

Representation
 1728.

F

They

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From Stat. 10 &
11 Will. 3. to
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They then go over the abuses and irregularities so often complained of; the increase of bye boat-keepers, the settling of persons in the island, the enticing away of seamen, and fishermen by the *New Englanders*, who also carried on an illicit trade; the disorders of the garrison at *Placentia*; the clashing interests of the adventurers and the planters; and the inefficacy of Stat. 10 & 11 Will. 3. They remind his majesty of their representations of the 2d of March 1715-16, and especially of that of the 16th of December 1718, and the *heads of a bill* annexed to the latter. They submit that so much of that, as may be thought proper, may be proposed to parliament immediately; they judging that an *intire remedy* for the evils complained of, could not be effected, without the assistance of the legislature.

However, they said, there were some irregularities, which could be corrected by the king's own authority, without the interposition of parliament; those were, the irregularities of the garrison, and the disorders committed in the winter season. With respect to the former, they recommend,

mend, that considering the lieutenant governor of *Placentia* thought himself accountable to no one but the king, a nearer controul and check over his conduct would keep him within bounds; and therefore, that the commodore on the station should be commander in chief both by sea and land, as had formerly been the practice, which would at once put an end to the competition, and jealousy, which had so long subsisted between the land and sea forces. As to the second, they recommend, that the commodore might have power to appoint judges, and justices of the peace, to decide disputes between the inhabitants, and distribute justice amongst them during the winter season. This they thought would alleviate the misery of those unhappy people, which was great enough without additional evils from the anarchy in which they lived. They say, that heretofore much encouragement had not been given the settlers, to continue in the island, and therefore regular governors, as in other colonies, had very seldom been appointed for them; and it was their opinion, that these poor people, should rather be encouraged to settle in *Nova Scotia*. They were about three thou-

PART II.

From Stat. 10
11 Will. 3. to
A.D. 1728.

Recommends
civil govern-
ment.

PART II. *sand* in number, with their wives and children, and might be of service there, where inhabitants were wanted.

From Stat. 10
and 11 Will. 3.
to A. D. 1728.

They took into consideration the claim of property made to stages, &c. in prejudice of the fishing ships, upon which *Mr. Fane's* opinion had been taken; and they thought many such titles, if enquired into, would be found to be defective; they therefore proposed, that some person, skilled in the laws, might attend the next commodore, and assist him to enquire into them, in behalf of the crown. The same person might likewise be useful in forming regulations for the better government of the inhabitants, during the winter season, so long as they continue there. They also recommended, that the bishop of London, as ordinary of the plantations, should send a clergyman, whose salary might be put on the establishment of the garrison at *Placentia* *.

This representation of the lords of trade was taken into consideration at the committee of council. The committee referred to

* Ent. F. 158.

the

the board to consider whether, as the com-
 mission, proposed to be given to the *Lord*
Vere Beauclerck, would vacate his seat in
 parliament, the service intended might
 not be equally well carried on by *instruc-*
tions to be given to the *Lord Vere Beau-*
clerck, for putting in execution all the
 powers entrusted to the commodore, by stat.
 10 & 11 Will. 3. and by a *commission*, to
 be given by his majesty to a person skill-
 ed in the laws, who should accompany the
Lord Vere Beauclerck, for appointing jus-
 tices of the peace, and establishing some
 form of civil government among the peo-
 ple who had settled themselves in that
 island, that they might not be left in a
 state of anarchy, upon the departure of
 his majesty's ships of war. If their lord-
 ships saw no objection thereto, they were
 desired to consider of a proper form of
 commission and instructions.

PART II.

From Stat. 10
 & 11 Will. 3. to
 A. D. 1728.

They were also desired to consider,
 whether it might be adviseable to sepa-
 rate the government of *Placentia* from that
 of *Nova Scotia*.

The committee made another order the
 19 of April 1729, in which they recom-

PART II. mended to his majesty all the points proposed by the lords commissioners of trade.

From Stat. 10. &

1 Will. 3. to

A. D. 1728.

In obedience to the first order of the committee of council, the lords report, that they thought a commission to some person to attend the *Lord Vere Beauclerck*, with proper instructions, might serve instead of a commission to his lordship. They prepared a commission and instructions accordingly, whereby such person was required to take the advice of *Lord Vere Beauclerck*, and to execute such matters as his lordship should propose to him in writing, for his majesty's service. Among the instructions they inserted some relative to the acts of trade and navigation; which, however, their lordships thought would prove of small effect till his majesty should be pleased to erect a court of admiralty, or some other proper jurisdiction in Newfoundland, to take cognizance of offences against those acts.

They drew up instructions for *Lord Vere Beauclerck*, and made the old heads of enquiry a part of them.

They remark, that they had added an instruction,

instruction, which required his lordship to send home all offenders, in robbery, murder, and felony, and likewise the witnesses, which had not always been done. This was to be practised till such time as some other method should be established for trying offenders in the country, which may, say their lordships, perhaps be thought necessary, so soon as the island shall have been put under better regulations, and some person skilled in the laws may hereafter be annually sent thither for this purpose, with his majesty's commission of oyer and terminer.

PART II.

From Stat. 10 &
11 Will. 3. to
A. D. 1723.

They were of opinion that the government of *Placentia* should be separated from that of *Nova Scotia*.

This design for establishing some sort of government in Newfoundland ended in the appointment, not of *a person skilled in the law*, but of Captain Henry Osborn, commander of his majesty's ship the *Squirrel*.

A civil governor is appointed.

The commission given to Captain Osborn begins by revoking so much of the commission to the governor of *Nova Scotia*,

PART II.

From Stat. 10
& 11 Will. 3. to
A. D. 1728.

tia, as related to the government of *Placentia*, or any other forts in Newfoundland; and then goes on to appoint *Henry Osborn* governor and commander in chief in and over our said island of Newfoundland, our fort and garrison at *Placentia*, and all other forts and garrisons erected and to be erected in that island. It then gives him authority to administer the oaths to government, and to appoint justices of the peace, with other necessary officers and ministers for the better administration of justice, and keeping the peace and quiet of the island. But neither he nor the justices were to do any thing contrary to the Stat. 10 & 11 Will. 3, nor obstruct the powers thereby given to the admirals of harbours, or captains of the ships of war. The justices were required to be aiding and assisting to the commodore, or commanders of the ships of war, and the fishing admirals, in putting in execution the said statute. The governor was to erect a court-house and prison; all officers, civil and military were to be aiding and assisting to him in executing this commission. In case of his death, the government was to devolve on the first lieutenant of *the Oxford*, the ship commanded by *Lord Vere Beauclerk*.

Such

Such were the terms of the first commission of civil governor, granted for Newfoundland. The instructions that accompanied this commission, have nothing in them very particular. They are fourteen in number; and the last required him to execute all such matters as *Lord Vere Beauclerk* should propose to him, for his majesty's service. The instructions to his lordship contained all the *heads of enquiry* relating to the trade and fishery, and the abuses and irregularities so long complained of, and they were fifty in number.

PART II.

From Stat. 10 &
11 Will. 3. to
A. D. 1738.

We are told, that on the 24th of May 1729, a box was sent to the *Lord Vere Beauclerk*, in which were eleven setts of *Shaw's Practical Justice of the Peace*, each impressed on the covers, in gold letters, with one of these titles, *Placentia, St. John's, Carboneer, Bay of Bulls, St. Mary's, Trepassey, Ferryland, Bay de Verd, Trinity Bay, Bonavista, Old Parlekin* IN NEWFOUNDLAND; together with thirteen printed copies of Stat. 10 & 11 Will. 3, and a bundle containing the acts relating to the trade and navigation of this kingdom. And thus provided, his lordship and the governor set

PART II. set sail for Newfoundland *, in the summer of the year 1729.

From Stat. 10
& 11 Will. 3.
to A. D. 1728.

Having brought down this history to the period, when an attempt was made to afford some sort of civil government to Newfoundland, I shall make a short pause in the narrative; and call the reader's attention to some few documents, that will more strongly impress upon his mind the actual state of things in that island, and the pressing necessity there was for the interposition of the parliament, or of the executive government, to correct abuses, and establish some sort of regular authority. I have before given a particular account of the enormities subsisting within three years after passing Stat. 10 & 11 Will. 3, from a letter written by a person then confided in by the government at home; I mean Mr. Larkin †. It is very plainly to be collected, from the representation made by that gentleman, that this statute was ineffective and inadequate from the very beginning. What is inapplicable in its origin, is not likely to become more useful in a course of time. It will be

* Entries F. 176 to 234. Bund. O. 40.

† Vid. ant. pa. 34.

found,

found, in fact, that in all the time that **PART II.**
 elapsed between passing that act, and From Stat. 10 &
 11 Will. 3. to
 A. D. 1728.
 the year 1729, disorder and anarchy in-
 creased more and more; and nothing re-
 mained but to try another system.

The documents I shall produce will
 be extracts from the correspondence and
 communications made by the commo-
 dores and commanders on the Newfound-
 land station, to the board of trade. In
 these it will be seen, what was the nature
 of the disorders and irregularities com-
 mitted in the island; and it will appear
 how very inadequate was the authority
 and jurisprudence conferred by the sta-
 tute of King William, and how ill the
 authority and jurisdiction so given, was
 administered.

One of the correspondents writes in this
 manner.—“The admirals which are ap-
 pointed by the Newfoundland act, to de-
 cide differences, in relation to fishing-
 rooms, &c. have entirely neglected it in
 all its parts. Indeed, at their first arrival,
 they claim their prerogative, as by the
 said act, as far as it suits with their own
 interest and no further; except a particu-
 lar

Disorders in
 Newfoundland,
 and conduct of
 the fishing admi-
 rals during this
 period.

PART II.

From Stat. 10 &
11 Will. 3. to
A. D. 8728.

lar friend of theirs should arrive with a fishing ship; in such case should the ships fishing rooms of that harbour be taken up before he arrives, they often remove some planter or other for him, pretending that the planter's title is not good to the room he possesses, when the commanders of men of war, some years before, adjudged it to be the said planter's right."

"These things are often done, and several of the inhabitants' fishing voyages ruined thereby. It is common, that what is done one year, in relation to fishing rooms, is contradicted the next; so that the fishing-rooms are not settled to this very day. Many times these *admirals* never were in the land before, nor knew any thing of the matter; in which case some old west country master commonly takes care that the said admiral do nothing but what he pleases.—Those are the patrons that are commonly called *kings* in that country, who sacrifice other people's interest frequently to serve their own. The admirals are some of the first men to cut down the roofs of their stages, cook-rooms, and flakes, which paves the way for the inhabitants to follow their example, who in
the

the winter season generally carry away all the remainder. It is certain the admirals are seldom or never at leisure to hear any complaints whatsoever, except one of their favourites is the plaintiff*." PART II.
From Stat. 10 &
11 Will. 3. to
A. D. 1723.

"The masters of ships in Newfoundland generally endeavour to force their goods upon the inhabitants, especially the poorer sort, who generally pay dearest. Say they, if he makes a good voyage, we shall be all paid; and if he does not (says every one to himself) I will be quick enough to get my payment. By this means they have a jealous eye, the one over the other. If the fishing does not prove so good as was expected, some of these masters will fall upon them, before the fishing season is half over, take away their fish before half made; another comes and takes away his train; and many times there comes a third, who has more men than they, and takes it away from the former; he that has most men is sure to have the greatest share. This is a common practice in Newfoundland. They never acquaint the admirals with this proceeding before they do it;

* Entries, D. pa. 337.

neither

PART II.

From Stat. 10
& 11 Will. 3.
to A. D. 1728.

neither do the admirals trouble themselves with it afterwards. But the consequence lies here ; the planters' men will catch no more fish, because they have no hopes of getting any wages ; the planter is ruined, and all the rest of the creditors unpaid ; who, if they had given him the liberty to make his fishing-voyage, might have paid them all. The merchants of England have suffered exceedingly by this unparalleled thing, there being no precedent for it in the whole Christian world. I am fully satisfied that by this thing, and the multiplicity of liquors imported into Newfoundland yearly, the trade thereof has suffered more, than by the French plundering it so often in the late wars."

"It is most certain that the admirals in Newfoundland have *never* taken any care about the good of that trade ; and their reasons generally given for it are, that they come to Newfoundland to mind their owner's business ; and as nothing was allowed them for defraying the charges of keeping courts, they could not do it*."

* Entries, D. pa. 344.

This is from Captain Taverner's Letter of Remarks the 20th of March 1713-4.

Another

Another writes thus.—“But what I would more particularly represent to their lordships, is the clandestine and illegal commerce carried on between the *New England men*, and several of the British masters, especially the fishing admirals; who after they have, according to the act, qualified themselves in England for fishing ships, depart for *France, Spain, or Portugal*, where they freight with wines and brandies; which early in the year they carry directly to Newfoundland; and either dispose of to the planters, or barter with the New England-men for the produce of the plantations. By these means Newfoundland is not only supplied with these foreign European commodities, but it is become a mart, from whence other American plantations are (in fraud of his majesty's duties) in a good measure furnished.”

PART II.
From Stat. 10
& 11 Will. 3.
to A. D. 1724;

“As the admirals are chiefly concerned in this unfair trade, so their tyranny and oppression in the harbours, where there are none of his majesty's ships, is not to be reckoned amongst the least causes of the decay of the fishery; those who labor in it, having learnt by experience, that the rule of their decision is their private interest,

PART II.

From Stat. 10
& 11 Will. 3.
to A. D. 1728.

terest, and that fishermen are not to expect any justice from them. This contributes to a scarcity of men, which occasions wages to be so extravagant, that the fish which they catch is often not sufficient to pay the servants: And the inhabitants are thereby so much discouraged, that there have not been half the number of boats employed by them as formerly.”

“But whatever redress the corrupt administration of the admirals is capable of, another great disadvantage, which the fishery labors under, proceeds from the country being, during its long winter, without the least form of government or order. It is my humble opinion, that it would be of considerable service to it, if some of the inhabitants were intrusted with commissions of the peace for the administration of justice during that season*.”

Another writes—“I flattered myself that as there was no garrison here (namely at St.

* Entries, D. pa. 494.

Commodore Scott's Letter, the 16th of November 1718.

Johns') to terrify or interfere, I should find a stricter obedience to the laws and regulations that had been made for the government of the place; and that proper regard was shewn to the authority vested by law in the fishing admirals; but on the contrary I find, that through the ignorance of some, and negligence of more, for some years past, they have been so slighted, that unless the captains of the men of war are present to assist and countenance them at their courts, their meetings would be nothing but confusion, and their orders of no use, which is the reason we are obliged to *usurp* power, which, I apprehend, does not properly belong to us, of publishing orders in our own names; to prevent, as much as we can, the threats, the rioting, and disorders, which, to the great detriment of the fishery, are generally practised in our absence.

PART II.

From Stat. 10
& 11 Will. 3. to
A. D. 1728.

The great misfortune, and which I think is the origin of all the rest that attend this country, is, that no body in the winter season is empowered to keep peace, and administer justice; that the sober and industrious are every day liable to be insulted

G

and

PART II.

From Stat. 10
& 11 Will 3. to
A. D. 1728.

and robbed by the idle and profligate, unless they can oppose them with greater force. In the *heads of inquiry* from the lords commissioners for trade and plantations, there is an article which directs, the names of the persons to be returned them, who administered justice during the last winter; but I cannot find that we are any where authorized so to empower proper persons upon leaving the country; which is so well known by every body, that were we to pretend to appoint any body, not the least regard would be shewn them."

Speaking of *Placentia*, and the part surrendered by the French at the treaty of *Utrecht*; he says,—“Before the arrival of the men of war, they are threatened and intimidated into a compliance with whatever is required of them; the admiral’s powers are contemned; their court represented as ridiculous and invalid, and of course, no justice to be had. But as this has been already represented by petition from the masters of ships, and other methods, I will not take up your time by enumerating more particulars, which would only be a repetition of what is already sufficiently

ficiently known to their lordships. **Al-** **PART II.**
 though I could not settle every thing in From Stat. 10
 and 11 Will. 3.
 to A. D. 1728.
 the order it ought to be, I endeavoured to
 do all I could; and as I found the regard
 to the fishing admirals so mightily dimi-
 nished, as made me justly apprehend,
 orders from them would be but negligently
 obeyed, I therefore gave out in my name,
 such as I found absolutely necessary, the
 copies of which I have herewith sent; and
 have also entered them in a book, which I
 have left sealed up with one of the princi-
 pal inhabitants, to be delivered to the next
 officer that shall come after me, that he
 may know what I did, and my reasons for
 so doing. I beg leave to say, that if such
 a register of the proceedings of every officer
 had been kept ever since we had possession
 of the place, it would not be so difficult to
 decide every one's property; which really,
 as things were, I could not pretend to do,
 without running a risk of doing injustice."

"I found disputes had been very differ-
 ently decided; sometimes according to the
 laws and customs that were in force in the
 time of the French, and sometimes accord-
 ing to those observed in the other parts of
 Newfoundland. For no new act having
 G. 2 passed

PART II.

From Stat. 10 &
and 11 Will. 3.
to A. D. 1728.

passed since the acquisition of the place, and no certain rules presented by *the beads of inquiry* from the lords of trade, every one has decided as he thought proper*.”

Another says, “there is another great occasion of disorder, which always stores up large stock of complaints, to perplex us upon our arrival—the neglect of deputing some body to maintain order in the winter, or the want of power rather to depute some-body for that purpose; so that the winter season is a sort of respite from all observance of law or government. At that time, theft, murder, rapes, or disorders of any kind whatsoever, may be committed, and most of them are committed without controul, and time enough given for the offender to make off: for should any one concern himself to secure the party, his design would be withstood, as an usurped authority; and most would take part with the offender, to suppress the usurpation, without regard what became of the criminal, or what may be the consequence of the crime; and I have been acquainted with some cases of this kind: so that there seems an absolute necessity, that this par-

* Bund. O. 31. Letter from Lord Vere Beauchamp. St. Johns’, 19th August 1728.

ticular

ticular should be provided for, that people may always have somebody to apply to for justice; that somebody may always be at hand to suppress disorder and riot, and to have a lawful power to command the assistance of his majesty's subjects in the execution of a duty exercised for the public good. *St. Johns'* is the metropolis of the island, and the discipline which is kept up there, whether bad or good, will have a great influence upon all the rest of the harbours. If good order could be established here, it might easily be effected in all other places; and I do not know any thing that tends more to confusion, and proves more prejudicial to the fishery, than that irregularity."

PART II.

From Stat. 10
and 11 Will. 3.
to A. D. 1726.

After having spoken of the oppression from debts, the imposition in prices, the seizing for payment, and the like, he goes on—"It is likewise necessary to acquaint their lordships, that although it is reasonable for them to believe, that the authority given by the statute to the admirals of harbours, is sufficient to secure them peace and quietness, and to prevent any disturbances that may happen, to the detriment of the fishery, yet the experience of any one that has but once known this trade,

PART II.

From Stat. 10
and 11 Will. 3.
to A. D. 1728.

will affirm, that was it not for the yearly expectation of a ship of war coming among them, the power of their admirals would be of little regard ; so that one may modestly affirm, they only commence regulation upon the arrival of any of his majesty's ships, and lay it down the moment they are gone ; upon which account several go and come with the trade, which charge, I believe, they would gladly be freed from, could they be secure of good order in the winter *."

Another writes, "I have made it my particular care to inform myself about the government, *that* being the material and only thing wanting : for without that there is nothing ; and with that, I mean a good government, there would be every thing—it would give a new life and spirit to every thing ; for then every man would know his own, and no more ; every one would know his master, and obey ; and every one would know his servant, and no more ; every servant would do his master's work, and every master would pay his servants' wages without fraud ; he would know his

* Ent. E. 132. From Captain Kempthorne's letter, October 1715,

own pile of fish, his boat, his stage, his nets, &c. But on the foot it is now on, he that happens to be the strongest, knows every thing to be his own, and the weakest knows nothing, or had as good as know nothing, except in that little interval of time when his majesty's ship, or ships, happen to be there; and very often the aggressor absconds, runs into the woods, and flies from justice, until the ships are gone; and then down he comes, and reigns lord again. This has been done by a great many, but especially by one *Ford*, who had a power left him by a commander of one of his majesty's ships to be governor of *Petty Harbour*. I have seen, and heard so very much of this, that I faithfully believe, and I have done myself the honour in two letters to my lords of trade, to acquaint them, as I here do, that no man living in the country of Newfoundland is fit to govern. For the set of people that live here, are those that cannot live in Great Britain, or any where else, but in a place without government; and it is my opinion, without there is a *governor*, a man of honour and justice sent to Newfoundland, I mean a *civil governor*, that shall not reside altogether at one place, but must have

PART II.

From Stat. 10
& 11 Will. 3. to
A. D. 1728.

PART II. a sloop, or some embarkation, to transport him from cove to cove, and set order and rule amongst them, the fishery and trade to that place must fall in a little time.”

From Stat. 10
& 11 Will. 3, to
A. D. 1728.

“ I have given out several orders for the admirals, and the oldest masters and planters to survey the stages and cook-rooms, &c. to know what belong to ship-rooms, and what was boat-rooms; and their report to me was, that they had not been surveyed so long, that there was none, either admirals, masters, or inhabitants, knew one from another; which was the best, and all that I could get on that head*.”

Again—“ for the most part the admirals are for their own private benefit, and not the public good, in general; they have some privileges more than the others, and especially in collecting their debts due to themselves, and very little else is minded of the act of parliament relating to the admirals of the harbours, if they are not compelled by the commanders of his majesty's ships of war, and all this is for want of a governor on the spot. The admirals

* Ent. E. 1411. From Captain Passenger's answers to heads of inquiry, October 1718.

deter-

determine differences, and very often they appeal to the commanders of his majesty's ships for a final determination; but stand by that no longer than while the captain is on the spot*." PART II.
From Stat. 10
and 11 Wm. 3.
to A. D. 1728.

Another writes, "I had several complaints from the inhabitants and others, of injustice done them by the *admirals*, *vice-admirals*, &c. of their taking their fish off the rocks before cured, and other goods, for debts by them contracted, without any law or justice, which has been a common thing amongst them; so that they wholly ruin the fishery, for the planters have nothing to work with next year. These things are done by masters of ships, when the admiral has been in harbour, without his order. By this irregular proceeding the strongest man gets all, and the rest of the creditors nothing; so that the next year a planter is forced to hire himself out for a servant."

Again—"as for the people complaining to admirals of any injustice done them by others, I do not find that any master of a

* Ent. E. 401. From Captain Passenger's answers to heads of inquiry, October 1718.

ship

PART II.

From Queen
Elizabeth to
Stat. 10 & 11
Will. 3.

ship values him, but the strongest side takes away every thing by force *".

Another writes, "the admirals prove generally the greatest knaves, and do most prejudice, being both judge and party, in hearing suits for debt; and when they have saved themselves, then they will do justice to others: so it would be requisite to have a civil government, and persons appointed to administer justice in the most populous and frequented places, that they may be governed as Britons, and not live like a banditti or forsaken people, without law or gospel, having no means of religion, there being but one clergyman in all the country †."

While the king's officers, and persons employed and trusted by the government, were making such uniform complaints of the abuses and disorders in the government of Newfoundland, the merchants adventurers seem to have been wholly blind to these irregularities. In

* Ent. D. 426. 429. From Captain Leake's letter, September 27th, 1714.

† Ent. D. 445. From Mr. Cuming's representation, February 1714-5.

several

several representations and memorials from them, sent in consequence of letters from the board of trade, written in the year 1715, there are complaints of grievances, but those were quite of a different sort; and if *they* were removed, they appear to have been wholly unconcerned as to the continuance of those we have just been recounting.

PART II.

From Stat. 10
and 11 Will. 3.
to A. D. 1728.

They complain of the great quantities of liquor and tobacco, which had paid no duty, and were imported by the *New England-men*, whereby the fishermen were debauched, and the fishery generally hindered; that the New England ships enticed away the seamen, and were encouraged thereto by a premium of forty shillings per head, given by the government of New England for bringing seamen and fishermen. They prayed that all import of liquor and tobacco, except from Great Britain, should be prohibited, and the articles forfeited; and that the fishing admirals should have power to seize, and to have half the forfeiture.

Complaints
from the Mer-
chants.

They prayed, that all store-houses, &c. built by planters since 1685, in the front of
fishing

PART H.

From Stat. 10
and 11 Will. 3.
A. D. 1728.

fishing ships' rooms, towards the water, should be declared by act of parliament to belong to the ship to which the fishing room belonged—this to be enforced by forfeitures, to be levied by the fishing admirals. For better preservation of store-houses, cook-rooms, stages, &c. &c. they prayed that the fishing admirals, at the end of the season, should inspect them all, and depute some honest and best inhabitant of the harbour, to take care that no one presumed to demolish or injure them; and that such person so deputed should receive twenty shillings from the fishing ship which occupied it next season.

They propose some strict regulations, to prevent aliens and strangers sending out ships as English owned; with a power to the fishing admirals to administer an oath to the masters of ships, as to the ownership; and to seize, as forfeited, all foreign ships; half the forfeiture to go to the person seizing.

They complain, that the French parts were not so open for fishing ships to get rooms as they should be, *Governor Moody* and others pretending to have bought the French

French plantations; that the governor had permitted French ships to come, and had taken all power out of the hands of the fishing admirals.

PART II.

From Stat. 10 &
11 Will. 3, to
A. D. 1721.

In order that the poor labouring fishermen might not suffer oppression and disturbance from any military, or public officer, soldier, they desired, that no military person, on any pretence whatsoever, should intermeddle with the fishery or fishermen, inhabitants, or others; nor should let the soldiers out to hire, nor keep sutling houses, nor have, for their private use, any house out of the lines of the fortification, or any gardens that have served, or may serve, for fishing rooms, according to the judgment of the fishing admirals of the harbour.

And because the commodores of late years had taken upon them to keep courts, and send warrants to several remote harbours, for commanders of fishing ships, in the height of the season, upon frivolous complaints of idle and debauched men, and others, without the complaint being first heard by the fishing admirals, according to act of parliament, to the great prejudice of the fishery—they prayed, that the commodore might

A R T II. might not in future be permitted to do the like; that all complaints might be decided by the fishing admirals, and that no commodore should presume to intermeddle with debts between merchants, masters, planters, and fishermen, as they had lately done, to the great prejudice of the merchants. They pray, that the ships of war, which were there to protect the trade, might be obliged to come or send assistance, in case of piracy or mutiny in any of the harbours.

From Stat. 10
& 11 Will. 3. to
A. D. 1728.

They pray, that none should retail liquors to fishermen, or persons concerned in the fishery, but only to their own servants; that goods, the produce or manufacture of Great Britain, might be exported duty free, for the benefit of the fishery; that all oil, blubber, furs, and fish, taken or made in Newfoundland by British subjects, might be imported duty free, and that Mediterranean passes for the ships carrying fish might be given gratis.

They pray, that fishermen should be obliged to fish till the last day of August, if required by their masters. The usual day had been the 20th of August; but the fish now came later. That fishing admirals.

mirals should have power to give corporal punishment to all persons, of what degree soever, who profaned the Lord's-day, and all common drunkards, swearers, and lewd persons; that a sufficient number of ministers should be sent to the principal harbours, to instruct the inhabitants; and that they might be paid from England, the country being very poor*.

PART II.

From Stat. 10 &
11 Will. 3. to
A. D. 1728.

Others represented, that it would be proper to add penalties to stat. 10 and 11 Will. 3.; that masters of ships should give bond to bring back such persons as they carried out; or, if they went to a foreign market, to procure others to do it; that bye boat-keepers should give bond to return and bring back all their servants and hired men, with the like proviso, in case of going to a foreign market; that masters coming from any place but Great Britain, should give bond not to take away any fishermen or seamen—the penalty to be fixed by the fishing admirals; that seamen, or fishermen, who refused to return

* Memorial of the merchants of Poole, in answer to a letter from the board, 3d December 1715. Another, word for word the same, came from Weymouth, vid. Bund. M. No. 4, 5.

home,

PART II.

From Stat. 10 &
11 Will. 3. to
A. D. 1728.

home, should forfeit all their wages; that no master of a ship, bye boat-keeper, or other person, going or trading to Newfoundland, should give credit to any servant or fisherman to more than forty shillings; nor any other person selling liquor to more than five shillings; that a debenture, or bounty, be allowed on all beef and pork, as if exported for sale; and also for all bread, flour, and malt, that should be shipped off in fishing ships bound for Newfoundland *. To these particulars were added the same complaints about foreigners interloping in the fishery, as in the former memorials. The mayor of Plymouth, in answer to the same sort of letter from the board, says, that the merchants had no other complaint to make than the encroachments of foreigners †.

Such were the representations made by the officers of the crown on one hand, and by the merchants on the other, respecting the trade and government of the island. I have delivered them in their own words, and the reader will decide between them.

* The memorial from Exeter, 30th Jan. 1715-6. Bund. M. No. 6.

† Bund. M. No. 8.

P A R T III.

Justices appointed—Opinion on raising Money by the Justices—Contest between the Justices and fishing Admirals—Opinion on the Authority of the Admirals—A Court of Oyer and Terminer proposed.—Such Commission issued—Lord Baltimore revives his Claim—The Peace of 1763—Remarks of the Board on Stat. 10 & 11 Will. 3.—Newfoundland a Plantation—Custom-house established—Property in Flakes, &c. discussed—Stat. 15, Geo. 3, c. 31.

SOME hope might reasonably be entertained, that the establishment of a civil government, and the appointment of justices of the peace, with proper officers for executing the law, would have been received by all as a desirable improvement in the state of society in the island, and it might be expected, that such an ap-
 H pointment

PART III.

From A. D.
1728, to Stat.
15, Geo. 3.

PART III.

From A. D.
1723, to Stat.
15, Geo. 3.

pointment could not fail of its effect. But the cause which had always operated to prevent any sufficient authority being introduced into that place, opposed itself to this new establishment. The *western merchants*, who had been silent, while this measure was in agitation, were ready enough to bring complaints of its consequences, when carried into execution; and we shall soon see the struggle made to prevent any lawful authority taking root in Newfoundland.

The government soon had to regret, that they had not taken the advice of the board of trade, to bring forward a bill in parliament for correcting all the abuses, then subsisting there; for it will be found that the opposition raised against the civil governor and his justices, was on account of their not deriving their authority from parliament, but only from the king in council. How futile soever this reason may be, it had its effect in staggering many, and contributing to bring the office, and persons bearing it, into great question, if not contempt.

Mr. Osborn, upon his arrival, proceeded

ed to carry into execution his commission. PART III.
 He divided the island into convenient districts, and appointed in each of them, out From A. D.
1728, to Stat.
15, Geo. 3.
 of the inhabitants and planters of the best
 character, such a number of *justices of the* Justices appointed.
peace and constables, as seemed necessary.
 In order for building a prison, he ordered
 a rate, such as the justices represented, he
 says, to him as of little burthen to be
 raised, within the districts of *St. Johns'*,
 and *Ferryland*; and a prison was to be
 built in each of those places. It was not
 greater than half a quintal of merchantable
 fish per boat, and half a quintal for every
 boats'-room, including the ships-rooms of
 ships fishing on the bank, that had no boats;
 with the like proportionable rate upon
 such persons in trade as were not con-
 cerned in the fishery; this rate was only
 for one fishing season. He erected several
 pair of stocks, and he expressed a hope
 that the measures he had taken would be
 sufficient to suppress the great disorders
 that had so long prevailed.

But he says he most feared, that as the
 best of the magistrates were but mean
 people, and not used to be subject to any
 government, they would be obedient to

PART III.

From A. D.
1728, to Stat.
13, Geo. 3.

orders given them, no longer than they had a superior amongst them. He says, that he and *Lord Vere* had done many acts of justice to the inhabitants and planters, particularly at *Placentia*, where they restored several plantations that *Colonel Gledhill* had unjustly possessed for several years; and many more might have been taken from that officer, had the real proprietors been on the spot to sue for them *.

When *Lord Vere*, and *Mr. Osborn*, returned to England, they made a report of what they had done; in order to be ascertained of the ground on which they acted, they wished the opinion of the law-officers might be taken on some points, and four questions were accordingly referred to the attorney-general, then *Sir Philip Yorke*. The main point was the levying money for building the prisons; and the attorney-general was clearly of opinion that the justices of the peace in Newfoundland had not sufficient authority to raise money for building a prison, by laying a tax upon fish caught, or upon fishing-boats; the rather because Stat. 10

Opinion on raising money by the justices.

* Bund. O. 49.

and

& 11 Will. 3. directs that it shall be a PART III.
 free trade. The power of justices of the peace in England for building gaols de- From A. D.
1728, to Stat.
15, Geo. 3.
 pends, says he, upon Stat. 11 & 12 Will.
 3, c. 19. by which they are enabled to
 make an assessment upon the several di-
 visions of their respective counties, after
 a presentment made by the grand jury at
 the assizes, great sessions, or general gaol
 delivery. As the justices of peace were
 by their commissions, to act according to
 the law of England, he apprehended they
 ought to have pursued that act of parlia-
 ment as nearly as the circumstances of the
 case would admit, and to have laid the
 tax, after a presentment by some grand
 jury; and then it should have been laid
 upon the *inhabitants*, and not upon the *fish*
 or *fishing-boats*. So far as the people had
 submitted to this tax, there might, he
 said, be no occasion to call it in question;
 but he could not advise the taking of ri-
 gorous methods to compel a compliance
 with it.

As to assaulting any of the justices or
 constables, or any resistance to their au-
 thority; that, says he, might be punished
 by indictment, fine, and imprisonment at

PART III. the quarter sessions; and for contemptuous words spoken of the justices or their authority, such offenders could only be bound to their good behaviour. Destroying the stocks or whipping-posts were indictable offences. He was of opinion the justices could not decide differences relating to property, their power being restrained wholly to the criminal matters mentioned in their commission.

From A. D.
1728, to Stat.
15, Geo. 3.

He thought neither *Captain Osborn*, nor the justices had power to raise any tax for *repairing churches*, or any other public work, except such works for which power was given to justices of the peace in England to levy money, by particular acts of parliament *.

Mr. Fane was likewise consulted upon these points, and was of the same opinion; however he adds, for their lordship's consideration, admitting the Stat. 11 & 12 Will. 3. had not been strictly pursued, yet as the assessment of fish was equally laid, as the people had submitted to it, as no other way could be thought of for raising

* 27 April 1730. Bund. O. 70.

the tax; and as his majesty's commission PART III.
 would be intirely ineffectual, unless a From A. D.
 gaol was built, whether any inconveni- 1728, to Stat.
 ence could arise, if upon the refusal 15, Geo. 3.
 of any of the persons assessed, the method
 laid down by Stat. 11 & 12 Will. 3. were
 pursued to compel a compliance with it*.
 Upon being again consulted, he says,
 he thought *Captain Osborn*, as he had
 acted with so much caution and prudence,
 and had taken no arbitrary step, in execu-
 tion of his commission, could not be liable
 to a prosecution in England, in case the
 inhabitants should not acquiesce in the
 tax. He thought it absolutely necessary
 the tax should be levied according to the
 Stat. 11 & 12 Will. 3. and notwithstand-
 ing the proceeding already had was not
 entirely agreeable to that law, he thought
Captain Osborn would be very well justified
 in pursuing it, as it seemed the only me-
 thod whereby the design of his majesty's
 commission could be executed †.

Such were the discussions raised on the
 occasion of these attempts to improve the
 police of the island. *Mr. Osborn* again Contest between
the justices and
fishing admirals.

* Bund. O. 71.

† Bund. O. 73.

PART III.

From A. D.
1728, to Stat.
15. Geo. 3.

went to Newfoundland: but in a letter from St. Johns' in September 1730, he gives a very bad account of the new institution. He says, he had hoped that a proper submission and respect would have been paid to the orders he had given, and to the magistrates he had appointed; but instead thereof, the *fishing admirals*, and some of the rest of the masters of ships and traders in the island had ridiculed the justices' authority very much, and had used their utmost endeavours to lessen them in the eyes of the lower sort of people, and in some parts had, in a manner, wrested their power from them. The admirals had brought the powers given them by the fishing act in competition with that of the justices, and had not even scrupled to touch upon that of the *governor*. All this discord proceeded from a jealousy the admirals and the rest of the masters of ships had conceived, that their privileges granted them by Stat. 10 & 11 Will. 3. were invaded by these magistrates; which power, says he, "those admirals could hardly ever be brought to make use of (without it was to serve their own purposes) before, nor till they saw these officers established; and they are now,
adds

adds the governor, doing all they can against these men, only because they bear this commission. Indeed, says he, I find by their will, they would be sole rulers, and have nobody to controul them in their arbitrary proceedings. He expostulated with them, but it seemed to serve no other purpose than to raise their resentment against him, as the abettor of the justices. He could not charge the justices with having taken any arbitrary steps; their fault was rather the contrary, whereas the admirals were guilty of many."

PART III.
From A. D.
1728, to Stat.
15, Geo. 3.

"The commission of the peace was in general disliked by all the *masters of ships*, who were the chief people that opposed most of the steps the governor had taken; for which reason, and partly from the indifference of some of the justices, in their offices, who thought they suffered in their way of trade, and got the ill will of the people they dealt with, and partly from the incapacity of others, the commissions of the peace were but indifferently executed. However the governor, notwithstanding this opposition, proceeded to make appointments in places where he had before made none."

The

PART III.

From A. D.
1728, to Stat.
15, Geo. 3.

The *prison* and *court house* at St. Johns' were nearly finished, and people had very well complied with the rate. He agreed to a presentment for a rate to build a prison at *Ferryland*; and he said, he did not doubt but the very sight of these two prisons would, in some measure, check many people in their evil courses *.

Memorials were presented to the governor, by the justices of *St. Johns'*, complaining that they were obstructed in their duty by the fishing admirals, who had taken upon them the whole power and authority of the justices, bringing under their cognizance all riots, breaches of the peace, and other offences, and had seized, fined, and whipped at their pleasure; they had likewise appointed public-houses to sell liquor, without any licence from the justices; the admirals told the justices, *they* were only *winter justices*, and seemed to doubt of the governor's authority for appointing; that the authority of the admirals was by act of parliament—the *governor's* only from the privy council †. This distinction in the authority from whence

* Bund. O. 75.

† Ibid. O. 79.

they

they derived their power, was thought ^{PART III.}
 sufficient for the admirals to presume up-
 on; and the comparative pretensions of ^{From A. D. 1723, to Stat. 15, Geo. 3.}
 them and the justices were rated accord-
 ingly in the minds of the ignorant and
 malicious *.

The towns in the west were not back-
 ward to join in this clamour against the
 justices; they complained that the gover-
 nor had taken the power out of the hands
 of the fishing admirals, and vested it in
 the justices, who had proceeded in an ar-
 bitrary way to tax the servants and inha-
 bitants; had issued out their warrants not
 only against servants, but against the mas-
 ters of vessels themselves, in the midst of
 their fishery; to their great prejudice, and
 in defiance of the admirals and the act of
 parliament. They suggested that these
 justices were, some of them New Eng-
 land men; and none of them ever com-
 ing to England, as the admirals did, there
 was no redress to be obtained against them
 for their illegal proceedings. They
 said, some of the justices supplied the
 fishermen and seamen with liquor at ex-

* Bund. O. 84.

PART III. orbitant rates, though the merchants would supply them at a moderate advance. After stating such plausible topics, which, it was well known, would always be listened to when Newfoundland was in question; they prayed, "That such justices might have no power during the stay of the fishing ships; but that the admirals might resume their authority, and that the commodore and captains of men of war should be ordered to be aiding and assisting to them therein *.

From A. D.
1728, to Stat.
15 Geo. 3.

Opinion on the
authority of the
admirals.

This competition between the fishing admirals and the justices was taken into consideration by the board of trade, who called for the opinion of *Sir Philip Yorke*, then attorney-general, and he reported, that upon a view of the commission to the justices, of Stat. 10 & 11 Will. 3. and of all the complaints, it appeared to him the whole authority granted to the fishing admirals was restrained to seeing the rules and orders contained in that act, concerning the regulation of the fishery, duly put in execution; and to the determination of differences arising between the

* Bund. O. 104, 105.

masters

masters of fishing boats, and the inhabitants, or any bye boat-keepers, touching the right and property of fishing-rooms, stages, flakes, &c. which was a sort of civil jurisdiction in particular cases of property; whereas the authority of justices extended only to breaches of the peace. He was therefore of opinion, that the powers granted to the justices were not inconsistent with any of the provisions of the act, and that there was no interfering between the powers given by the act to the admirals, and those by the commission to the justices *.

PART III.

From A. D.
1728, to Stat.
15, Geo. 3.

The struggle between the fishing admirals and the justices was still kept up; the west country merchants, and masters of ships supporting the former, and the governor standing by the latter. This produced complaints on both sides; and no doubt, in such a contest a just cause of complaint might often be found on both sides. But the aggressors were certainly those who set themselves against the authority of the governor and justices, and who, by their conduct on this occasion,

* 29th of December 1730. Band. O. 109.

plainly

PART III.

From A. D.
1728, to Stat.
15, Geo. 3.

plainly shewed they wished the inhabitants and poor planters should be deprived of all protection from legal government, and should be left wholly at *their* mercy.

It was given in special charge to the succeeding governor, *Captain Clinton*, and to his successors, to make a report of what was done towards carrying into execution the new commission of the peace. In compliance with that charge, we find the governors return such accounts of the opposition of these admirals to the civil government, as are hardly to be credited but by those who have read what went before; and after that it would be tiresome and nauseous to detail any more upon the subject*. This contest continued for some years, till it was found that no opposition could induce his majesty's ministers to withdraw this small portion of civil government, which had not been granted till it had been loudly called for by the necessities of the island. The fishing admirals then became as quiet, and useless as before, and content-

* The correspondence to this effect may be seen, Bund. O, 108, and so on through that volume.

ed themselves with minding their own **PART III**
 business, in going backwards and for- ^{From A. D.}
 wards to the banks. ^{1713, to Stat.}
^{15, Geo. 3.}

While this question of the competition between the fishing admirals, and the justices, was agitated, *Mr. Fane* also was consulted, respecting the distinct jurisdiction of these officers, and he agreed in opinion with the attorney-general; he also at the same time delivered an opinion that is worth remembering; namely, that all the statute laws made here, previous to his majesty's subjects settling in Newfoundland are in force there; it being a settlement in an infidel country; but that as to the laws passed here, subsequent to the settlement, he thought they would not extend to that country, unless it was particularly noticed*. The question then will be, *when* did this settlement take place? And it may be urged, that the policy having all along been to prevent settlement, and that persons should resort thither only for the fishing season, there is to this purpose a settlement commencing annually; and that in truth, British

* 30th of March, 1730. Bund. O. 119.

subjects

PART III.

From A. D.
1728, to Stat.
15 Geo. 3.

subjects carry with them the laws of this country, as often as they go thither ; if so, all the law of England, as far as it is applicable to the state and circumstances of Newfoundland, is constitutionally and legally of force there. This was a question of much importance, but it has since been settled by the wording of the act of last session for establishing a court there ; which court is to determine according to the law of England, as far as the same is applicable to the island.

A commission
of oyer and te-
miner proposed.

Nothing material appears respecting the civil government of Newfoundland, till the year 1737, when the board of trade listened to the representation that had frequently been made by the governor, of the inconvenience of sending over to England for trial, persons who had committed capital felonies. In such cases the witnesses were glad to keep out of the way ; the felon was sent to England, without any person to prove his guilt ; a great expence was incurred, justice was disappointed ; or if the fact were proved, the poor witnesses was left to get back as they could, with the expence of their voyage,

voyage and residence, and the certain loss of one season's fishing.

PART III.

From A. D.
1728 to Stat. 15
Geo. 3.

It had been provided by stat. 10 and 11 Will. 3. that such capital felonies might be tried in any county in England; and in the commission of the peace lately given, this policy was so closely adhered to, that the justices were therein restrained from proceeding in cases of doubt and difficulty, such as robberies, murders, and felonies, and all other capital offences. It appeared to the board of trade that this scruple might now be got over; and they proposed inserting in the commission that was to be given to *Captain Vanbrugh*, a clause, authorising him to appoint *commissioners of Oyer and Terminer*; but the board wishing to be assured that the king's prerogative was not restrained in this particular, by the above provision in stat. 10 and 11 Will. 3. they consulted the attorney and solicitor general, who thought the king's power was not abridged by that act. The board, in their representation to his majesty, state the example of a commission being granted to the commodores with other persons, for trials of piracy, as a precedent for trusting them with this authority to issue commissions for

I

trying

PART III.

From A. D.
1728 to Stat. 15
Geo. 3.

trying felons ; and that it was no more than was given to other governors of plantations. But they inform his majesty, that as this power might be too much to be entrusted in the hands of judges and juries very little skilled in such proceedings, they had added an article, which restrained the governor from allowing more than one court of Oyer and Terminer in a year, and that only when he was resident ; and he was further instructed, not to suffer any sentence to be executed, till report thereof be made to his majesty *. But when the commission went before the privy council for approbation, all that part which gave this authority was directed to be left out ; so fearful were they of trusting such authority to those in whom they had lodged the civil government of the island †.

So this point rested till the year 1750 ; when *Captain Rodney*, who was then governor, pressed the secretary of state for such a power to be granted. It was referred to the board of trade, where they resorted to what was projected in the year 1738 for *Captain Vanbrugh's* commission.

* Ent. F. 410.

† Ibid. 420. Bund. P. 27.

A doubt

A doubt arose with the board, whether this power might be given by *instruction*, or whether it must be inserted in the commission; and *Sir D. Ryder*, then attorney-general, being consulted, he was of opinion, that such power could not be granted by instruction, nor any otherwise than under the great seal; but that the manner of exercising such power might be prescribed by instruction; he thought the clause drawn for the commission of 1738 was sufficient, only that neither the power of trying, nor that of pardoning *treason*, should be entrusted with the governor, or any court erected by him. The commission issued accordingly, with this new power, to *Captain Francis William Drake* *.

PART III.

From A. D.
1728 to Stat. 15
Geo. 3.

Such Commission issued.

It may be remarked of this commission of Oyer and Terminer, issued under the new power given to the governor, that it has not been executed without some question being raised as to its legality. Persons, who were obstinately bent to believe there was no law in Newfoundland but stat. 10 and 11 Will. 3. were disposed to doubt the power of the crown to give au-

* Ent. G. 203. in April 1750.

PART III.

From A. D.

1728 to Stat. 15

Geo. 3.

thority for issuing this, as well as the commission of the peace. It has been the interest and inclination of many at Newfoundland to contest every thing that was not founded upon the same parliamentary authority as stat. 10 and 11 Will. 3. But this spirit, whether of ignorance or wilfulness, has worn off, in a great measure, of late years, though it is occasionally at work even now. And it is to be lamented at this moment, that the advice given by the board of trade in the year 1718, and afterwards on the occasion of establishing the civil government in 1728, was not followed; and an act of parliament passed for remedying all the abuses and irregularities at once, instead of resorting to the half measure that was then adopted, and which had all the difficulty we have seen to support itself.

If we are to judge from the dearth of matter in the books of the board of trade, things went on very quietly at Newfoundland for several years. We only find some scattered facts of no great importance.

Lord Baltimore
revives his
Claim.

In the year 1754, *Lord Baltimore* laid in his claim to be put in possession of a large tract of land in the island, by the name of
the

the province of Avalon, and of all the royal jurisdictions and prerogatives thereto belonging, and prayed that his majesty would approve *John Bradstreet, Esq.* as governor thereof. This grant has been before mentioned*. A claim so important was referred by the board of trade to the attorney and solicitor general; who, after inspection of such papers as were furnished by the board, and hearing what could be urged by Lord Baltimore, were of opinion, that as, notwithstanding the determination in 1660 in favour of the grant in 1623, there was no evidence of any actual possession of the province, nor the exercise of any powers of government there by the Baltimore family; as, on the contrary, it was most probable, that, at least from 1638, they had been out of possession; as from the year 1669 there had been many proceedings, which appeared from the books of the board of trade, and even an act of parliament passed in the 10 and 11 Will. 3. inconsistent with the right now set up, without taking the least notice thereof, and without any claim or interposition on the part of the Baltimore family; and as his majesty's approbation of a governor ought to be in conse-

PART III.

From A. D.
1728 to Stat. 15
Geo. 3.

* Vid. ant. p. 6.

PART III.

From A. D.
1728 to Stat. 15
Geo. 3.

quence of a clear title of proprietorship, they were of opinion, his majesty should not comply with the petition. This opinion of the law officers seems to have been adopted by the board, and no more has since been heard of the province of *Avalon* *.

The board of trade in November 1758, shewed a disposition to take into consideration the trade and fishery of Newfoundland, which were then said *to have declined of late years*. For the purpose of obtaining every information that could be derived from those experienced and interested in the question, they directed letters to be written to the towns in the west; but they received for answer nothing but such matter as had relation to the inconveniences resulting to the trade from a state of war; and the only remedies proposed were a due regulation of convoys, and that seamen employed in that trade should not be subject to pressing †.

The Peace
1763.

After the conclusion of the peace in 1763, a more favourable opportunity seemed to present itself for doing some-

* May 23, 1754. Ent. G. 329.

† Ent. G. 341, 343, 345.

thing

thing towards the encouragement of the fishery. Upon this occasion, as upon former ones, when this subject was under deliberation, the board of trade called upon the western towns for advice and information; and now they joined to them, such towns in *Ireland* and *Scotland* as had lately engaged in that trade; namely, *Cork*, *Waterford*, *Belfast*, and *Glasgow*.*

PART III.

From A. D.
1728 to Stat. 25
Geo. 3^d

The French turned their attention to the arrangements to be made in their own fishery, in consequence of the peace. The French ambassador presented to our court a project of arrangement, to be reciprocally agreed upon between the two crowns, for avoiding disturbance and dispute between the English and French in carrying on the concurrent fishery. This matter came before the board of trade, who referred it to *Sir George Hay*, the king's advocate, and *Sir Fletcher Norton*, and *Mr. de Grey*, the attorney and solicitor general, for their opinion, whether the project was consistent with stat. 10 and 11 Will. 3.^d and whether the crown could legally enter into, and had power to enforce such regu-

* 6th December 1763.

PART III.

From A. D.

1728 to Stat. 15

Geo. 3.

lations, so far as they related to the subjects of Great Britain? To which they answered, that the project contained many things contrary to the act, as well in respect of the rights of the king's subjects, as to the mode of determining controversies arising there; and that the crown had no power to enter into, or enforce such regulations *.

It was, however, thought proper to draw up some *additional instructions* to the governor, with a view of preventing any interruption or disturbance being given by the English to the French in carrying on their fishery within the limits appointed by treaty. These were also submitted to the same law-officers for their opinion as to the statute, and the power in the king to make them. The law-officers made some alterations in these instructions, and declared, that in such form they might be legally given to the governor, being conformable with the thirteenth article of the treaty of Utrecht, and not repugnant to the statute. For, say they, although the statute seems to confine the whole trade of Newfound-

* 6th March 1764. Bund. S. 57, 58.

land to English subjects; yet as the French were at the time of passing the act, and had been for many years before, in possession of several parts of the island, and notoriously carried on an open fishery, and claimed to be entitled thereto; and as that claim, and the exercise of a fishery there, had not been rejected or disallowed by the treaty of 1686, nor by the treaty of *Ryswick* in 1697, although several petitions of merchants and others had been presented to the house of commons in the year 1696, complaining of encroachments of the French upon the English trade and fishery there; it seemed to them, that the statute was not meant to extend to such parts of the island, and its adjacent isles and places, as were then left in the possession of the French; nor to abridge or restrain the power of the crown over the same, consequential upon the making of peace; the exercise of which, in this instance, had received the repeated approbation of both houses of parliament in their resolutions upon the treaties of *Utrecht* and *Paris* *.

PART III.

From A. D.
1728 to Stat. 15
Geo. 3.

The board of trade adopted the amend-

* 21st March 1764. Bund. S. 61. Ent. H. 236, 240.

ments

PART III. ments made by the law-officers, and recommended to his majesty the instructions so

From A. D.
1728 to Stat. 13
Geo. 3.

altered to be given in charge to *Mr. Palliser*, then governor of Newfoundland. They took occasion, in their representation at that time, to enlarge upon the nature of that trade.

Remarks of the
Board on Stat.
10 and 11 W. 3.

They said, that in framing these additional instructions, it became necessary to consider, with the closest attention, the provisions and regulations of Stat. 10 and 11 Will. 3.; which act, having been framed and passed at a time when the crowns of Great Britain and France had distinct rights and possessions on that island, and the subjects of both carried on distinct fisheries upon those parts of the coasts, which belonged to each respectively, was, they humbly conceived, in no respect properly applicable to the permissive fishery, which the subjects of France were entitled by treaty to carry on in common with the English subjects within the limits described; although, being an act in full force, they had found themselves under the necessity, in framing these additional instructions, to conform to the regulations and provisions of it, in many points, which did,
in

in their opinion, render those instructions less effectual and extensive than they might otherwise have been.

PART III.

From A. D.
1728, to Stat.
15, Geo. 3.

But independent of this objection to the act, they conceived it highly exceptionable in almost every other light in which it could be viewed. The regulations intended for the fishery were in general by no means applicable to the present state of it, and such of them as might be of use were not enforced by proper penalties. And, considered as a regulation of government and civil jurisdiction, this act, they said, was the most loose and imperfect that could have been framed, and necessity had already introduced deviations from it in many essential points.

Without entering into the particular regulations of the act, and considering only its principal imperfection, namely, the fishery of the island being altogether changed and varied from what it was, when the act was passed, it appeared to them to be disgraceful to suffer it to remain in the statute-book. But as they feared it was too late in that session to enter upon any new parliamentary regulations, the further

PART III.

From A. D.
1728, to Stat.
25, Geo. 3.

further consideration must be deferred for the present, unless his majesty should be of opinion that a repeal of the act should be moved for, and a short law enacted, empowering the king, by proclamation, order in council, or instruction to the governor, to make such regulations with respect to this branch of commerce, as he should, with the advice of his privy council, judge most expedient *.

But nothing was done towards correcting or repealing an act that had been condemned so often by public and private opinions of persons best able to judge of its merits.

The attention of government was now occupied by the questions which the late treaty had brought forward. The French court, more anxious than ever for the interests of their fishery, had started a doubt about the limits at Newfoundland, which drew on a long discussion at the board of trade. It had been intimated in the before-mentioned project of arrangement, and was afterwards pressed in a special

* 30th of March 1764. Ent. H. 260.

memorial

memorial from the French ambassador, PART III.
 that *Point Riche*, mentioned in the treaty From A. D.
1728 to Stat. 15.
Geo. 3.
 of Utrecht, was the same as *Cape Ray*;
 and that the French limits on that side
 should, therefore, be extended as low as
Cape Ray. This piece of geography was,
 on their part, founded on no better au-
 thority than a map of *Herman Moll*; and
 was shewn, by the board of trade in a
 representation, drawn with great accuracy
 and much at length, to be without any
 foundation. In this report of the board,
 it is demonstrated that all the French
 geographers united with those of Eng-
 land in assigning different places to *Point*
Riche and *Cape Ray*, and that the word-
 ing of several public papers and docu-
 ments, made it beyond all doubt the clear
 intention of both nations, that the French
 limits should end at *Point Riche*, and
 should not come down so low as *Cape Ray*,
 confining the French to the limit called
Petit Nord *.

The proceedings of the French at this
 time gave great uneasiness. At the close
 of this year, the board of trade made a

* 20th of April, 1764. Entries, H. 337.

PART III.

From A. D.
1728, to Stat.
15, Geo. 3,

representation to his majesty, respecting several ships of war being sent by the French to *St. Pierre* and *Miquelon*, which had been ceded to them by the peace; these, it was supposed, were sent thither, with a view to a sudden rupture, or at least to give improper countenance and hopes to the French in those parts; at any rate such a measure was considered as contrary to the treaty, by which those places were ceded merely as a shelter to the French fishermen *. It was feared a fishery was meant to be forced there out of the French limits, and an illicit trade carried on with the Indians. The ruinous state of our forts and fortifications in Newfoundland made these appearances the more alarming. It was therefore, recommended to put the forts upon a respectable footing †.

Representation
1765.

The board still kept in view the improvement of the advantages obtained for the fisheries in those parts, amongst which that of Newfoundland was the chief; and on the 29th of April 1765, they made a second representation to his majesty, more

* 11th of December 1764.

† Ibid.

full than either of the former; and for PART III.
 those who wish to be informed of the From A. D.
 nature of this trade, a very fit companion 1728, to Stat.
 to the representation made in the year 1718. 15, Geo. 3.
 This was followed by a third, dated the
 27th of March 1766, which also deserves
 particular attention.

Among other improvements meditated for Newfoundland, it was resolved to establish custom-house officers. The commissioners of the customs, in March and May 1764, issued out deputations constituting a collector and controller of the customs at Newfoundland. We find that *Captain Byng* had, in the year 1743, appointed a naval officer as a necessary assistant to him, in checking the illicit trade there carried on. It does not appear whether this appointment was continued by his successors.

A seizure was made about this time at Newfoundland of a ship, for want of a Newfoundland
a plantation.
 register; it appeared to the commissioners of the customs that Newfoundland had hitherto been looked upon merely in the light of a *fishery*, and vessels going thither were not thought liable to the same regulations,

PART III.

From A. D.
1723, to Stat.
13, Geo. 3.

lations, as those going to the other British colonies and plantations : they now applied to the treasury for advice on this point *; and the treasury referred it to the board of trade for their opinion ; who report, that they saw no reason to doubt its being a part of his majesty's plantations, and they thought its commerce, and the ships bound thither, should be under the same regulations as in the other plantations : their lordships further thought, that as the governor had suspected that many foreigners were sharers in the fishery and commerce of that island, and had made seizure of three ships, in two of which it clearly appeared that Spaniards were concerned, it was highly expedient and necessary, that the laws of navigation should be carried into execution there †.

Custom-house
established.

Thus by the establishment of a custom-house, and the introduction of the laws of navigation, was another pillar added to the civil government of that place. But this was considered and treated as an innovation by those who clamoured for a

* Bund. T. 50. † 5th of June 1765. Entries, H. 438.

free fishery, and Stat. 10 & 11 Will. 3. PART III.
 and this institution being effected without From A. D.
 the authority of parliament, was question- 1728, to Stat.
 ed in the same manner, and upon the 15, Geo. 3.
 same ground, as the commissioners of the
 peace, and of oyer and terminer. The
 article of fees was a topic on which a
 complaint might be founded with most
 hopes of success, where the interests of
 a fishery were concerned. This the
 merchants pushed with petitions and
 memorials for some time without pre-
 vailing: and the fees of the custom-
 house are a cause of complaint to this
 very day.

The activity of *Mr. Palliser* during his Property in
 government, had contributed to bring flakes, &c. dis-
 forward the old debated question of pro- cussed,
 perty in flakes and stages. These ques-
 tions were of different sorts, the first re-
 lated to the parts between *Bonavista* and
Point Riche, the two limits of the French
 fishery. Many tracts of land within those
 limits were claimed as private property;
 and, as such, might interfere with the con-
 current right of the French to fish there.
 This matter was agitated at the board of
 K trade,

PART III.

From A. D.
1728, to Stat.
15, Geo. 3^d

trade, and an additional instruction upon that head was given to the governor, by which he was commanded, not upon any pretence whatsoever, to allow any *exclusive possession* to be taken, as private property, of any lands, rivers, or islands in the northern parts, between *Bonavista* and *Point Riche*; taking special care that such ships as resorted to that part, should chuse their stations as they arrived, and should take up, and occupy, subject to the governor's controul, such space only of beach as was proportioned to the number of their boats, conformable to Stat. 10 & 11 Will. 3^d *.

This provision was with a design of preserving peace between the fishermen of the two nations. But the exclusive property which some persons claimed in stages, flakes, and beach, was a question that applied to the whole of the island; and had become of a magnitude to call for some discussion and adjustment. The board of trade thought proper to consult *Mr. Yorke*, then attorney general, upon

* 6th of May 1765. Entries, H. 435.

this

this point. They proposed to him two questions; first, Whether exclusive property in any part of Newfoundland can be acquired under colour of any provision of Stat. 10 & 11 Will. 3, without a grant or patent from the crown? secondly, If any part of that act does warrant such exclusive property, what is the nature and extent of it? Can it be acquired for the purposes of cultivation, and settlement of the land, or is it confined to the purposes of fishing; and in what manner, and upon what principles, and by whom are any disputes arising thereupon to be decided?

PART III.

From A. D.
1728, to Stat.
15, Geo. 3.Justices appoint
ed.

By the answer to these queries, it was hoped to obtain some clear judgment upon these points, for the direction of the governors; who had sometimes considered this as real, sometimes as personal property, at other times as no property at all; and were involved in great difficulties, and exposed to vexatious suits for what they had done at Newfoundland, in relation to this doubtful sort of occupation and possession. But I do not find that these ques-

PART HI. tions were resolved by the attorney-general, or that the board pressed him for any answer to them *. So that these points remained for examination in after-times.

From A. D.
1728, to Stat.
15, Geo. 3.

Mr. Palliser carried into execution upon the coast of *Labrador* (which by proclamation, the 7th of October 1763, had been separated from *Canada*, and annexed to the government of Newfoundland) that plan of a free fishery, to be carried on by ships from Great Britain, which was practised at Newfoundland, and which he had shewn himself so determined to maintain upon its original principles. In order to accomplish this he had contest with exclusive property. Several persons claimed on that coast a property in fishing-posts and settlements; some under grants from the French governors of *Canada*; some from *General Murray*. These he broke in upon, and withal he treated the American subjects of Great Britain, who were concerned in some of these settlements, as excluded from this fishery, by Stat. 10 & 11 Will. 3. which statute he held to apply

* 29th of March 1766. Entries, H. 461.

to *Labrador*, now it was brought within the government of Newfoundland, and under the authority thereof he contested the private rights set up on that coast. To give effect to these principles, he made some *rules and regulations* for carrying on the fishery in those parts.

PART III.

From A. D.
1728, to Stat.
15, Geo. 3.

These novelties caused many complaints to be brought before the board of trade, which led to very long enquiry for three or four years, at different times.

Upon these questions, the board of trade took some measures; with regard to the Americans, they were of opinion that it was not the design of the Stat. 10 & 11 Will. 3. to exclude from the fishery ships fitted out from America. With regard to the other points which turned upon considerations of property and legal topics, they referred to the attorney and solicitor general, some cases of grants from French governors. Upon view of these cases, the law officers were of opinion, that these could not be allowed as valid in any judicial enquiry, and ought not to stand in the way of any rules, or

K. 3

regulations

PART III. regulations to be made in the government
of that coast *.

From A. D.
1728, to Stat.
15, Geo. 3.

Some time after, it appeared to the board, that the forcing of these rules and regulations, in order to throw open the fishery there to adventurers from Great Britain, was not a wise policy. They were calculated only for a cod, or whale fishery, whereas the seal fishery, which was most pursued here, was a *sedentary fishery*, and needed the encouragement of exclusive property, to support the expence of the adventure. They therefore, on the 24th of June 1772, recommended to his majesty that the coast of *Labradore* should be re-annexed to the government of *Quebec* †. This would certainly put an end to the disquietude under which persons laboured, who had private property there, which they saw exposed to the operation of Stat. 10 & 11 Will. 3. This, however, does not seem to have been the reason for the board recommending such measure; for being called upon to reconsider their opinion as to the re-annexing

* Ent. H. 470. 500.

† Ent. I. 229.

of the coast of *Labradore* to the govern- PART III.
 ment of *Quebec*; they said, that it was From A. D.
 not in consideration of the loss which in- 1728, to Stat.
 dividuals would sustain, if private pro- 15, Geo. 3.
 perty was disturbed, but they said, when
 it appeared to them that a great part of
 that coast was claimed as private property,
 under grants from the governors of *Ca-*
nada; and that his majesty was bound by
 treaty to admit those claims; they thought
 he could not in justice enforce regula-
 tions that were subversive of those rights*.
 According to the principle here laid down,
 the *Quebec act* Stat. 14, Geo. 3, c. 83, an-
 nexed to that government all such terri-
 tories, islands, and countries as had, since
 the 10th February 1763, been part of the
 government of Newfoundland, and they
 were so to continue during his majesty's
 pleasure †.

The last measure taken respecting New-
 foundland, during this period, was pas-
 sing Stat. 15, Geo. 3, c. 31, commonly
 called in the island, *Sir Hugh Palliser's* Stat. 15, Geo.
act; it being supposed to have originated³
 from the advice and assistance, princi-

* Entries, I. pa. 249.

† Sect. 1.

PART III.

From A. D.
1728, to Stat.
15, Geo. 3.

pally, of that gentleman. The design of this act was to favour, and keep alive, the principle of a ship-fishery carried on from England: one of the regulations of it, was to enforce the payment of wages, another to secure the return of seamen, and fisherman to this country; the provisions of it are all enforced by a special penalty, the want of which in Stat. 10 and 11 Will. 3. had been so often lamented.

The nature of the provisions of this act, and the rigour with which it was easy to enforce them, contributed to make this law very unpopular in the island; and after all the alterations that had been made, without the aid of parliament, since Stat. 10 & 11 Will. 3. none was so ill received as this; but, being an act of the legislature, it was submitted to with silent discontent. When persons concerned in this trade complain of the innovations made of late years in the trade of Newfoundland, and express a wish to be put on the footing of Stat. 10 and 11 Will. 3, they mean, that they wish to be relieved from this act of parliament;

ment; and they have, many of them, PART III.
 no scruple to say, that since *Sir Hugh* From A. D.
Palliser's act, it is with the greatest 1728, to Stat.
 difficulty that merchants can carry on 15, Geo. 3.
 the fishery with profit to themselves.

The regulations made by this act were very important. It was now declared, that the privilege of drying fish on the shores of Newfoundland, should be enjoyed only by his majesty's subjects arriving at Newfoundland from Great Britain, or one of the British dominions in Europe; which settled the question that had been raised in favour of the colonists. This act gave several bounties for encouraging industry in the take of fish. It provided for securing the return of the seamen to Europe; by empowering the master to detain, out of their wages, forty shillings for paying their passage home; and obliging him to see his men put on board passage-vessels. It forbade masters to suffer seamen to take up more than half their wages in articles of supply; and obliged them to pay the other half in cash, or good bills on England or Ireland. It gave to the seamen a lien on the

PART III. the fish, and oil for their wages; and, to
From A. D. secure the execution of this act, penal-
1722, to Stat. ties were annexed to the various provi-
15, Geo. 3. sions, and a jurisdiction given to the court
of session, and vice-admiralty to enforce
those penalties.

PART IV.

Import of live Stock, &c.—Representation on a Bill brought in by the Western Merchants—Three Acts passed—Complaints about Courts—Review of the Courts at Newfoundland—Fishing Admirals—Surrogates—The Governor holds a Court—Courts of Vice-Admiralty and Sessions—The Governors cease to hold Courts—Court of Common Pleas instituted—Complaints against it—Representation—And Act passed for a Court of Civil Jurisdiction.

DURING the last five or six years that PART IV.
the board of trade continued in existence, there appears nothing of importance upon the books respecting this trade and fishery. That board was abolished in 1782. It was not till June 1784, that a committee of council was appointed by his majesty for matters of trade and plantations.

From Stat. 15,
Geo. 3. to A.
D. 1793.

In

PART IV.

From Stat. 15,
Geo. 3, to A.
D. 1793.

Import of live
Stock, &c.

In this interval, the war had determined, and the independence of the United States of America had produced, a new position of affairs in that part of the world, by which Newfoundland was affected, as well as the other parts of his majesty's territories in America. One of the first questions that was occasioned by this revolution was, the supply of provisions for Newfoundland and the fishery. These had before the war, come in a great measure from the Colonies that were now separated; and before the new situation of things was quite understood, this supply, it was thought, might still be occasionally permitted, and, in a case of distress, had actually been resorted to. The western merchants took alarm at the appearance of an intercourse being allowed between the United States and their fishery; they presented memorials to have a stop put to it; they alledged the place might be supplied from *Great Britain* or *Canada*. The allegations on both sides, of those who argued for a supply, under certain limitations, from the United States, and of those who were wholly against this intercourse, led to long examination of witnesses, and various considerations of policy, before the lords of the

the committee *. This ended in the committee resolving, in January 1785, to recommend to his majesty, that a permission should be given to import bread, flour, and live stock, in British bottoms, which ships should clear out from the king's dominions in Europe, with a licence from the commissioners of the customs, which should be in force for seven months. As this licence was to be for seven months, and the temporary act for regulating the intercourse with the United States would expire in less time, it was suggested by the attorney and solicitor general, whether it might not be better to pass a special act for this purpose †. The committee accordingly recommended to his majesty, that a bill to that effect should be proposed in parliament, but that it should be in force for that season only ‡. Such an act was accordingly passed; namely, stat. 26 Geo. 3. c.1. The same question was revived the following year; when it was considered whether the act should be renewed. Examinations in like manner were had; in which the merchants declared, they were of the same opinion as they had been last

PART IV.

From Stat. 15,
Geo. 3, to A.
D. 1793.

* 1785, January 14, 17, 20, 24, 28.

† 1785, January 29, 31.

‡ 1785, Feb. 5th.
year;

PART IV. year ; but that they had rather the bill of
 From Stat. 15, last year should be renewed, than the trade
 Geo. 3, to A. between Newfoundland and the United
 D. 1793. States should be laid intirely open*. The
 committee came to the resolution, that the
 act should be renewed †.

Representation
 on a Bill
 brought in by
 the Western
 Merchants.

In the mean time, the encouragement of
 the fishery had come under the considera-
 tion of the committee—A bill had been
 brought into the house of commons at the
 instance of the western merchants; in
 this bill it was intended to make several
 alterations in the law of Newfoundland;
 the principal points of which were, to
 give the present possessors a permanent in-
 terest in their lands, and to repeal some
 material regulations of stat. 15 Geo. 3.
 which the merchants had always disliked.

On 9th December 1785, his majesty was
 pleased to refer the matter of this bill to
 the committee for them to consider it, and
 to report their opinion thereon. This bill
 was read at the board on the 14th of
 January 1786, and every provision of it
 was separately discussed. The subject of

* 1785, Dec. 7, 9, 12, 13—1786, Jan. 10. 11:

† January 14,

the fishery was under consideration for PART IV.
 several weeks *. At length the committee From Stat. 15
 made a report on the intended bill. This Geo. 3, to A.
D. 1793.
 report contains their opinion upon most of
 the points relating to Newfoundland, and
 is therefore well deserving of notice. It
 has been laid before the house of commons,
 and is now in print. The report was un-
 favourable to the bill, which was accord-
 ingly laid aside †. However, another was
 introduced, and passed into a law, and is
 stat. 26 Geo. 3. c. 26. This act conti-
 nued the bounties given by stat. 15 Geo. 3.
 and contributed to render more complete
 the plan begun by that statute, for pre-
 venting the seamen and fishermen with-
 drawing themselves from this country,
 either by staying at Newfoundland, or
 deserting to other places.

In the year 1788, the intercourse between
 the United States and Newfoundland was
 again agitated; and upon the strong repre-
 sentations of the *Quebec* merchants, the com-
 mittee were of opinion for proposing a bill
 to parliament, to prevent entirely the supply
 of bread, flour, and live stock, from the

* 1786, January 16, 17, 18, 25, 30—Feb. 1. 3.
 7, 10, 14—March 11.

† 1786, March 17.

PART IV. United States ; but, at the instance of the western merchants, this intention was dropt *. The following year the mode of occasional supply was continued, at the desire of the western merchants, and so it has gone on ever since by authority of stat. 28 Geo. 3. c. 6. s. 13.

From Stat. 15,
Geo. 3, to A.
D. 1793.

Two acts pass-
ed.

In this and the following sessions two acts of parliament were passed respecting Newfoundland. By stat. 28 Geo. 3. c. 35. his majesty was enabled to make some regulations at Newfoundland, to prevent inconveniencies that might arise from the competition of the English and the French in the fishery. By stat. 29 Geo. 3. c. 53. it is declared, that fish, not caught by subjects of Great Britain going from the British dominions in Europe, may not be landed or dried at Newfoundland. This last act was occasioned by the people of *Bermuda* having engaged in the fishery, and selling their fish to those who had a clear right to dry and cure on the island ; by this provision the design of stat. 15 Geo. 3. c. 31. in confining the fishery to ships going from Europe, was fully secured.

* 1788, Feb. 9—March 26—April 3.

A new subject of complaint had grown up in Newfoundland—this was the hearing and determining of *civil causes*. Among all the grievances, and the expedients for remedying them, during the tract of time we have gone through, there seems to have been no solicitude or attempt to provide a *court of civil jurisdiction*. While this place continued merely a fishery, the causes of action between parties were simple and of less magnitude; but of late years the population had encreased, and among the persons resident there were dealings of a mercantile nature to a great extent, and of a sort to need a judicature, that would command more confidence than any of the old establishments had been thought entitled to. There arose therefore, from time to time, discontents upon this head, and these led to measures that ended in making an intire new establishment of a court. To make this subject more intelligible, we should look back to the courts that had hitherto been known at Newfoundland, the nature and jurisdiction of which were brought under consideration at this time.

PART IV.

From Stat. 15,
Geo. 3, to A.
D. 1793.
Complaints
about courts.

The first regulation that looked at all
L like
Review of the
Courts of New-
foundland.

PART IV.

From Stat. 15,
Geo. 3. to A.
D. 1793.

like a court, was the authority given by stat. 10 and 11 Will. 3. c. 25. f. 15. to the fishing admirals, to hear and determine controversies and differences between the masters of fishing ships, and the inhabitants, or any bye boat-keeper, concerning the right and property of fishing rooms, stages, flakes, or any other buildings or conveniency for fishing or curing fish; and if either party thought himself aggrieved, he might appeal to the commander of any of the king's ships belonging to the convoy. This was a civil judicature of a limited sort—the *adventurers* or *merchants*, it should seem, were not liable to it; it was confined also in its object; *debts* still remained without any mode of recovery, as well as all other personal wrongs of a civil nature.

Fishing Admi-
rals

Another jurisdiction was given to the fishing admirals by this act: by sect. 14 they were to see the rules and orders contained in that act concerning the regulation of the fishery duly put in execution; and this was given them, as the act expresses it, *to preserve peace and good government among the SEAMEN and FISHERMEN, as well in their respective harbours, as on the shore.* This was a sort of police invested in them, which

which might be considered as partaking PART IV.
 both of a civil and criminal authority. From Stat. 15,
 Geo. 3. to A.
 D. 1793.
 But this also, like the former, was limited
 as to the persons; no authority was given
 that could be exercised over the merchants
 and adventurers, who seem to be considered
 by this act as persons who might have right
 done them; but against whom it was not necessary
 to do any justice whatsoever—for, by the rules and
 orders of this act, the fishing admirals would be
 obliged to see they had ships-room; and their
 seamen and fishermen would be kept quiet and
 under controul; but if these adventurers had
 taken possession of any *fishing rooms, stages, flakes, or other conveniency for
 the fishery*, the admirals had no jurisdiction to
 call them to account, and to make restitution to
 the right owner, their jurisdiction in that
 particular being confined to the *masters of fishing
 ships, inhabitants, and bye boat-keepers.*

The merchants and adventurers being therefore
 subjected by this act to no controul or authority
 whatsoever, when they began to settle, and to
 have mercantile dealings, to a great amount, they
 had no

PART IV. thing to do but to take the law into their own hands; and having possessed themselves of plantations or fish, or any thing else, in payment of debts, real or pretended, there subsisted, under this act, no power whatsoever to call them to account; and it was, no doubt, for this reason, that the merchants have so constantly adhered to the support of this act, declaring that a free fishery, conducted under the policy of this act, was all they wanted, and complaining that every regulation made since that act has invariably operated to injure the trade and fishery. It was indeed the policy of this country to support a free fishery there, for ships going from hence, and to prevent settlement. So far the views of the government and the interest of the merchants concurred; but the application of this principle had the effect of leaving the island to the mercy of the adventurers, who found it their interest at length even to promote *settlement* to a certain degree; contrary to their own declarations, and to the policy of stat. 10 & 11 Will. 3.; for no part of which they seem to have had any value, but the feeble judicature and police it gave the island; in consequence of which, they saw the whole

From Stat. 15,
Geo. 3, to A.
D. 1793.

whole fishery abandoned to their sole will and pleasure.

PART IV.

From Stat. 15,
Geo. 3, to A.
D. 1793.

These observations upon the incomplete form of this judicature and police, suggest themselves upon the bare reading of the act; but the experience of the manner in which it was executed, shewed all this in a more aggravated appearance. It has been too often repeated in the course of this historical enquiry to need repetition here, that the admirals were the servants of the merchants, inasmuch as they werethe masters of some of their ships; that in many cases, therefore, justice was not to be expected from them; that is, in cases where their owners were concerned. In many others, where their owners or themselves were not concerned, there was always a partiality towards the description and class of persons with which they were connected; and a poor planter, or inhabitant, (who was considered as little better than a law-breaker in being such) had but small chance of justice, in opposition to any great west-country merchant. This bias must have been a strong impediment to the equal administration of justice in the hands of the fishing admirals. Besides this

PART III. which arose from their employment and connection, there was another disqualification, that was to be corrected by no integrity or fairness whatsoever. It should seem, that persons, educated as masters of merchant ships, could not in general possess that discrimination and discernment, which was necessary for determining right and property, even in fishing stages and flakes.

From Stat. 15
Geo. 3, to A.
D. 1793.

Such being the judicature established by the statute of King William, and such the hands in which it was lodged, we have found, that it was executed fully as ill as could from the nature of it be expected. We find that the admirals were most of their time out on the fishery; that, when in harbour, they were still employed about curing of their fish, and the other parts of their business; that the commanders of the king's ships were obliged to summon, enjoin, and enforce them to hold courts; that discovering the sluggishness of the admirals, they were under the necessity of taking liberties not given by the statute; that, being only a court of appeal, they were obliged to erect themselves into an original court. This they did by degrees, and with a sort of deference to the provisions of the

the act of parliament. At first they got the admirals to fit with them; and I have seen many judgments and proceedings to which the commander of some of the king's ships has first subscribed his name, and the admirals have added theirs. It is not to be wondered, that the commanders of the king's ships, with their superior endowments, should gradually obtain an ascendancy; and having thus blended their appellate jurisdiction with the original one lodged in the admirals, should at length wholly dispense with their attendance of the fishing admirals (who would be glad enough to be excused), and so in time succeed to a complete original exercise of judicial authority in the place of the admirals.

PART IV.

From Stat. 15
Geo. 3. to A.
D. 1793.

So indeed it happened. But there were not wanting occasions, when the admirals awaked from their lethargy, and shewed a steadiness in asserting the dormant powers lodged in them by the statute. These were when the adventurers and merchants perceived the government at home were making any attempt to introduce a better system of law and order into Newfoundland. Accordingly, we have seen, that

L 4

upon

PART III.

From Stat. 15,
Geo. 3. to A.
D. 1793.

upon the appointment of a civil governor and justices, in the year 1729, the admirals bestirred themselves; and, from the impulse which the competition inspired for the moment, they actually took upon them all the authority they possessed under the statute. They even went further, and claimed a criminal as well as a civil judicature; and proceeded to issue warrants, and do acts which belong to justices of the peace. In these usurpations they were supported by the western merchants, whose language it was to represent the provisions of stat. 10. and 11 Will. 3. as competent to the complete government of the island in all matters, both civil and criminal.

But with all this support, so limited a power, lodged in such feeble hands, could not sustain the contest; and the admirals soon fell back into the inactivity, neglect, and contempt, where they had before slumbered. As they sunk, the commanders of the king's ships rose into importance; the statute of William grew to be looked upon as a dead letter; and the administration of justice, in all the points there conferred on the admirals, was expected from nobody but the commanders of

of the king's ships, when they came to the island in the summer season. PART IV.

From Stat. 15,
Geo. 3, to A.
D. 1793.

Although the hearing of certain matters, by way of *appeal*, was given to the commanders by the statute, yet the hearing of them *originally* was not authorized. The possession of the former gave a colour for assuming the latter; and crude as this may seem, it was, perhaps, as well warranted as some of the instances of jurisdiction now exercised, and from long usage allowed to the first courts in Westminster-hall. When the captains were in possession of this, they proceeded, as happens mostly in the exercise of power and authority; they found in that place, as it is elsewhere, that all judges have the quality which is invariably supposed to belong to the best, that of enlarging the sphere of their cognizance*; and we find very soon, that the captains of ships took cognizance of *debts* contracted; and held courts, in which they enquired of, heard, and determined all possible causes of complaints; and with no other lights than those furnished by the statute of *William*,

* *Boni judicis est ampliare jurisdictionem.*

the

PART IV. the instructions from the governor, and the suggestions of their own good sense; paying always a due regard to the customs and usages of the country. They did every thing, that the fishing admirals might do, and every thing the admirals had at different times pretended to have a right to do. From their situation, and the support they received from the governor, they were enabled to maintain the jurisdiction they had assumed. The governor conferred on them the title of

From Stat. 15,
Geo. 3, to A.
D. 1793.

Surrogates.

Surrogates, an idea taken from the admiralty-law; to which, and which alone the naval governors were in the habit of looking, and under which it had long been a notion, that the fishery, as an admiralty concern, ought to be regulated. A *surrogate* is well known in Newfoundland, as legally deputed by the governor, to act as his deputy. Under this character the authority of the governor was exercised very beneficially. The time of *surrogating* was looked forward to as a season when all wrongs were to be redressed against all oppressors; and this naval judicature was flown to by the poor inhabitants and planters, as the only refuge they had from the west country merchants,

chants, who were always their creditors, and were generally regarded as their oppressors.

PART IV.

From Stat. 15,
Geo. 3, to A.
D. 1793.

While the *surrogates* in the different parts of the island were administering justice in this manner, the *governor* had also his court at *St. Johns*'; and, it is easy to believe, that every thing which the *surrogates* permitted to themselves, the *governor* thought himself equally entitled to do and command. Every matter, civil, and criminal, used to be heard, and determined in open court before the *governor*. Where no special direction was pointed out by law, a person in that situation was to be commended for striking out such a course as the exigency of the situation, and the good of the place required. This desire of doing good sometimes carried the *governors* further than strict legal propriety could warrant. They used to preside in the sessions of justices, although it was from their authority that the commission of the justices issued. It would be endless and unnecessary to enter into the instances of irregularity that must follow, when judicatures were instituted in such a place as this,

by

The governor
holds a court.

PART IV.

by persons who had nothing for their guide but the rectitude of their intentions, and a very honourable disposition.

From Stat. 15,
Geo. 3. to A.
D. 1793.

Courts of vice-
admiralty and
session.

In the year 1765, a custom-house being established at *St. John's*, a court of vice-admiralty, (the court of revenue in the plantations) was placed there. This court, in the absence of the governor, during the winter, had entertained complaints in other matters than those peculiarly belonging to it. In this it only followed the example of the *court of sessions*, where the justices had allowed the hearing of matters of *debt*, and other subjects of difference of a civil nature. It was in consequence of this usage, that the parliament afterwards conferred on the court of vice-admiralty, and the session, a jurisdiction of a civil nature. By Stat. 15, Geo. 3, c. 32. they have authority to determine disputes concerning the wages of seamen and fishermen, and the offences committed by their hirers and employers against that act. This jurisdiction was taken from the court of vice-admiralty, by Stat. 26, Geo. 3, c. 26, owing to the unfavourable impressions that had been

7

been made respecting the practice which **PART IV.**
 had prevailed in that court

From Stat. 153
 Geo. 3, to A.
 D. 1793.

Although the parliament took away from the vice-admiralty court the authority vested in it by law, it still continued to exercise that which no law had conferred on it ; and both that court and the sessions were resorted to in the absence of the governor and surrogates, for the administration of justice in all civil cases whatsoever. Justice administered under such circumstances could have but little of the authority and effect, which should attend upon the sentence of a court. There was no doubt in the minds of any, above the very lowest class, but the whole of this judicature was an usurpation : it was, therefore, more frequently employed as an engine of authority, to obtain that by a course of law, which could not, perhaps, be attained by open violence, than as the means of protecting the weak against the powerful. A merchant rather chose to have the assistance of the court of session or admiralty, to attach and seize the effects of his debtor, than incur the odium of taking them with force. The appearance of a legal course was preferable

PART IV.

From Stat. 15
Geo. 3, to A.
D. 1792.

ferable. But should a wealthy merchant become defendant in one of these courts, it was not so sure that he would approve the same legal course, or yield the same obedience to a sentence. He, as well as the court knew, there was no legal authority to compel; and it was a question of prudence only, whether such a defendant would submit quietly to their order. If the court happened to have in it persons who acted with vigour, and had character and influence sufficient to cause its decrees to be duely executed; it would, in such case, be but a bad prospect for a merchant to look for redress by an action, to be brought in England against a man who, perhaps, never might make a visit there. Such considerations might operate with the merchants to obey these courts, even when they decided against them. Besides, a merchant might think it for his advantage to yield, in one instance, to a court, which in so many others he found useful; he being more frequently plaintiff than defendant.

It was in this manner, by a sort of convention, upon views partly private, partly

partly public, with a design sometimes **PART IV.**
 selfish, often generally beneficial, but
 never without the concurrence and sup- From Stat. 15,
 Geo. 3. to D.
 A. 1793.
 port of the majority of those most inte-
 rested, was a judicature gradually confer-
 ed on these two courts, which with the
 governor, and the surrogates, possessed
 all the judicature in the island, civil as well
 as criminal.

But a time was coming, when a judi-
 cature, that stood on so weak a founda-
 tion, was to be shaken. Though the jus-
 tices, and the judge of the admiralty
 court might never come to England, the
 governor and his surrogates necessarily
 did. In the time of governor *Edwards*,
 some persons, discontented with a judge-
 ment made by him in court, at *St. Johns*,
 and carried into execution by the sheriff
 there, meant to redress themselves by
 bringing an action against the governor
 for a trespass in so depriving them of their
 property. This was to have been tried at
Exeter, but it was made up before the case
 was gone through to the jury.

The governor got well quit of this
 business, and he proceeded, during the
 remainder

PART IV.

From Stat. 15,
Geo. 3, to A.
D. 1793.

The governors
cease to hold
courts.

remainder of his time, to hear causes in person, without the least doubt or difficulty, as his predecessors had before done. But the minds of men were changed upon this subject; and his successor *Admiral Campbell*, 1782, was advised not to take upon him to sit in court, as his predecessors had done, nor to determine any causes whatsoever. He substituted in the room of this, a mode which was certainly without exception; and which, in a country like that, could not fail of having a very useful, and very extensive effect. The petitions which used to be brought to the governor in great numbers, upon all sorts of questions and subjects, were still received as before; but instead of holding a court, and making decisions, which were to be enforced by the sheriff, he directed his secretary to hear the complainant, and if necessary, the party, against whom the complaint was made, and thereupon to write at the bottom of the petition the governor's opinion, and give such advice, as if followed, would have the effect of complete justice. Advice and direction given from such authority was most usually followed,

ed; and the administration of justice was, PART IV.
 in a great degree, attained in this mode of application, without any course of pro-
 cess, as in a regular and open court.

However, in many cases, this method was not acceptable; and many more persons began, after this time, to recur to the courts of session, and vice-admiralty; and these two courts, as they were open all the winter, presented a more useful, and certain course of redress, than the above mode of petition. These two courts increased very much in business from the beginning of *Admiral Campbell's* government.

But these two courts derived this accession of business from the necessity of circumstances merely; their authority was still as feeble as before, and the exercise of it depended upon the like precarious circumstances, for being carried into effect. As the population of St. John's increased, and as the light of later times, which spreads every where, had reached that place, it became necessary to have something more than opinion and sufferance to found a judicial authority upon. When

M

Admiral

PART IV.

From Stat. 15,
Geo. 3. to A.
D. 1739.

Court of com-
mon pleas insti-
tuted.

Admiral Milbanke was to set out to his government, in the summer of 1789, he was strongly advised by his secretary, Mr. Graham, (who had been secretary to the three preceding governors) to get something of a court established, that might stand on unquestionable authority; and the governor's commission being searched for this purpose, it was found that he had full power to appoint judges, and in cases necessary, justices of oyer and terminer, &c. It was suggested to him, that judges, contrasted as the word there seemed to be with justices of oyer and terminer, ought to be considered as meaning something different from such justices; and that being in a popular, untechnical sense, usually applied to those who preside in the three courts in Westminster-hall, it had grown in the minds of unprofessional men to signify more especially judges in civil matters; that it therefore seemed, the governor, by these words, had authority to institute a court of civil jurisdiction; and he was accordingly advised to institute a court of common pleas to proceed by a jury in the manner of a court of common law in this kingdom.

This

This opinion upon the wording of the commission, was urged not to be a strained exposition, to obtain *totidem verbis*, an authority which perhaps might not have been intended to be given; but to be a necessary one, and such alone, as could be drawn from the words. But those who have read the foregoing history, of the first granting to the governor the authority of appointing commissioners of oyer and terminer, will be satisfied, when he reads the same words in the first commission granted for that purpose, that they were designed to convey nothing more than that simple authority. One may be a little surprised how a power of appointing commissioners of oyer and terminer should be penned so as to stand *judges*, and in *cases necessary justices of oyer and terminer*. But it appears that in commissions to West India, and other governors, where it was meant to convey the power of appointing standing *judges*, as well as occasional *justices*, these words are to be found, placed in this manner; and in the way precedents are followed, these words were copied, where it was meant to appoint only justices of oyer and terminer, and those occasionally.

PART IV.

From Stat. 13,
Geo. 3. to A.
D. 1793.

Justices appointed.

PART IV.

From Stat. 15,
Geo. 3, to A.
D. 1793.

Complaints
against it.

The governor's authority, whatever it might be, was actually carried into effect, by an appointment of a court of common pleas, and judges, in the summer 1789. This court of common pleas transacted business during the following winter; but the western merchants preferred very heavy complaints against the proceedings of this court; what they alledge against it may be seen shortly stated in the representation afterwards made by the committee of trade, and now printed by order of the House of Commons. Their great objection, which they do *not* state, but which I will venture to do for them is this; that they now saw a court established (as they believed) upon good authority, with which they could not trifle, as they had been used to do with the feeble judicatures before-mentioned; those inefficient courts they preferred, because they could make use of them when they needed their assistance, and could intimidate the justices, and obstruct their proceedings, whenever they themselves were to be the objects of animadversion. They had been in the habit of seeing this species of weakness and anarchy ever since Newfoundland was frequented, from father to son;

it

it was favourable to their old impressions, PART IV.
 that Newfoundland was *theirs*; and that From Stat. 14
 all the planters and inhabitants were to Geo. 3. to A.
 be spoiled and devoured at *their* plea- D. 1793.
 sure; in support of this, they had op-
 posed, as we have seen, every attempt
 at introducing order and government in-
 to that place. It was in this spirit, that
 they questioned the king's right to ap-
 point a civil governor, to appoint justices
 of the peace, to appoint commissioners of
 oyer and terminer; that they complained
 of the custom house, and even talked of
 presenting it as a nuisance, because erect-
 ed on ship's rooms; that they treated
 Stat. 15, Geo. 3, as destructive to the
 fishery, because it compels the payment
 of servants' wages; and that they brought
 forward a bill in 1785, in order to expose
 the servants once more to the will of their
 masters, as to the payment of their wages.

These clamours were backed with the
 popular representation, that the fishery
 should be *free*, and that a fishery carried on
 from this country, as the western mer-
 chants carried it on, was the old and true
 policy for Newfoundland. But their
 claims to a free fishery seem to be these;
 namely,

PART IV. namely, to be free of all inspection from government; no justices, no courts, no custom-house. This is what they mean, when they wish all *restraints* to be taken off the fishery, so as they may carry it on upon the footing of stat. 10 and 11 Will. 3.

From Stat. 15,
Geo. 3, to A.
D. 1793,

The pretences urged by the merchants against the court were seen through by his majesty's servants; but it appearing to the law-officers, that the governor had not authority under the words of his commission before observed upon, to institute that, or any other court, for civil causes; and it appearing to the committee of council for trade, that *a court of civil jurisdiction* ought to be established there, they recommended to his majesty to appoint or to authorise the governor, by proper words, to appoint one; and this court, they recommended, should proceed in a summary way. The opinion of the board on this matter will be better seen in the *representation* they made to his majesty, which was laid before the house of commons, and has been printed by their order.

However, no court was then established; and the court of common pleas, instituted by

by the governor, continued, during the year 1790, to proceed as before. The subject was taken up by the committee of trade in the year 1791; and a bill was presented to parliament, under their direction, for instituting a court of the sort they had recommended in the representation made in 1790. This bill passed into a law, and being intended as an experiment of a new judicature, it was to endure for one year only. The result of that experiment was to propose another bill in the sessions of 1792, for instituting a court somewhat different from that of the preceding bill. This also was only for a year.

PART VI.

From Stat. 25
Geo. 3, to A.
D. 1793.
Representation.

An Act passed
for a Court of
Civil Judication

It is now for the consideration of parliament finally to determine what courts are to be established in the island for the administration of justice in future.

April 1793.

However, no court was then established; and the court of common pleas instituted by

by the Government, continued, during the year 1800, to proceed as before. The subject was taken up by the committee of law in the year 1801, and a bill was presented to parliament, under their direction, for instituting a court of the sort they had recommended in the resolution made in 1800. This bill passed into a law; and being intended as an experiment of a

new institution, it was to endure for one year only. The object of that experiment was to propose a court in the island of 1802, for the trial of civil causes, different from the preceding bill. This bill was only for a year.



For a Court of
Law in the Island
of 1802

It is now for the consideration of parliament finally to determine what courts are to be established in the island for the institution of justice in future.

April 1802.

APPENDIX:

CONTAINING

The STATUTES relating to

NEWFOUNDLAND.

APPENDIX

CONTAINING



NEWFOUNDLAND

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APPENDIX

A P P E N D I X.

10 & 11 Gul. III. Cap. 25:

An act to encourage the Trade to Newfoundland.

WHEREAS the trade of and fishing at *Newfoundland* is a beneficial trade to this kingdom, not only in the employing great numbers of seamen and ships, and exporting and consuming great quantities of provisions and manufactures of this realm, whereby many tradesmen and poor artificers are kept at work, but also in bringing into this nation, by returns of the effects of the said fishery from other countries, great quantities of wine, oil, plate, iron, wool, and sundry other useful commodities, to the increase of his Majesty's revenue, and the encouragement of trade and navigation; be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present

Preamble.

[A] sent

King's subjects to have free trade to *Newfoundland*.

sent Parliament assembled, and by the authority of the same, That from henceforth it shall and may be lawful for all his Majesty's subjects residing within this his realm of *England*, or the dominions thereunto belonging, trading or that shall trade to *Newfoundland*, and the seas, rivers, lakes, creeks, harbours in or about *Newfoundland*, or any of the islands adjoining or adjacent thereunto, to have, use, and enjoy, the free trade and traffick, and art of merchandize and fishery, to and from *Newfoundland*, and peaceably to have, use, and enjoy, the freedom of taking bait and fishing in any of the rivers, lakes, creeks, harbours, or roads, in or about *Newfoundland*, and the said seas, or any of the islands adjacent thereunto, and liberty to go on shore on any part of *Newfoundland*, or any of the said islands, for the curing, salting, drying, and husbanding of their fish, and for making of oil, and to cut down wood and trees there for building and making or repairing of stages, ship-rooms, train-fats, hurdles, ships, boats, and other necessities for themselves and their servants, seamen, and fishermen, and all other things which may be useful or advantageous to their fishing trade, as fully and freely as at any time heretofore have been used or enjoyed there by any of the subjects of his Majesty's royal predecessors, without any hindrance, interruption, denial, or disturbance of or from any person or persons whatsoever; and that no alien or stranger whatsoever,

ever, (not residing within the kingdom of *England*, dominion of *Wales*, or town of *Berwick upon Tweed*), shall at any time hereafter take any bait, or use any sort of trade or fishing whatsoever in *Newfoundland*, or in any of the said islands or places above-mentioned.

No alien to
bait or fish in
Newfoundland.

2. And for the preserving the said harbours from all annoyances; be it further enacted by the authority aforesaid, That from and after the twenty-fifth day of *March* one thousand seven hundred now next coming, no ballast, prest stones, or any thing else hurtful to or annoying any of the harbours there, shall be thrown out of any ship or otherwise, by any person or persons whatsoever to the prejudice of any of the said harbours, but that all such ballast and other things shall be carried on shore, and be laid where they may do no annoyance.

No ballast, &c.
to be thrown
out of any
ship into the
harbours,

but carried on
shore.

3. And be it further enacted by the authority aforesaid, That no person or persons whatsoever shall (at his departure out of the said country, or at any other time) destroy, deface, or do any detriment to any such stage or cook room, or to the flakes, spikes, nails, or any other thing whatsoever thereto belonging, as he or they shall fall into at his or their coming into the said country, but that he or they shall (during his or their stay there) content him and themselves with such stage or stages only

No person to
destroy any
stage or cook-
room, &c.

Stages to be
repaired with
timber.

as are needful for him or them, and shall also (at his or their departure thence) leave all such his or their stage or stages, without doing, or causing to be done, any wilful damage to any of them; and that for the repairing of such stage or stages as he or they shall so take, during his or their abode there, the same shall be done with timber fetcht out of the woods there, and not by the ruining, breaking down, demolishing, prejudicing, or anywise injuring the stage or stages of any other person or persons whatsoever.

Every fishing
ship first enter-
ing harbour,
shall be admiral
during
that fishing
season, etc.

Second ship
vice admiral.

Next ship rear
admiral.

4. And be it further enacted by the authority afore said, That (according to the ancient custom there used) every such fishing ship from *England, Wales, or Berwick*, or such fisherman as shall, from and after the said twenty-fifth day of *March*, first enter any harbour or creek in *Newfoundland*, in behalf of his ship, shall be admiral of the said harbour or creek during that fishing season, and for that time shall reserve to himself only so much beech or flakes, or both, as are needful for the number of such boats as he shall there use, with an overplus only for the use of one boat more than he needs, as a privilege for his first coming thither; and that the master of every such second fishing ship, as shall enter any such harbour or creek, shall be vice admiral of such harbour or creek during that fishing season; and that the master of every such fishing ship next coming, as shall enter any such harbour or creek,

A P P E N D I X.

creek, shall be rear admiral of such harbour or creek during that fishing season; and that the master of every fishing ship there shall content himself with such beech or flakes, as he shall have necessary use for, without keeping or detaining any more beech or flakes, to the prejudice of any such other ship or vessel as shall arrive there; and that such person or persons, as are possessed of several places in several harbours or creeks there, shall make his or their election of such place as he or they shall chuse to abide in; and shall also, within eight and forty hours after any after-comer or after-comers into such place or places shall demand such his or their resolution touching such his or their election (if the weather will so soon permit, or so soon after as the weather will permit) give or send his or their resolution to such after-comer or after-comers, touching such his or their election of such place as he or they shall so chuse to abide in for the fishing season, to the end that such after-comer or after-comers may likewise chuse his or their place or places of his or their abode there; and in case any difference shall arise touching the said matters, the admirals of the respective harbours where such differences shall arise, or any two of them, shall proportion the place to the several ships in the several harbours they fish in, according to the number of boats which each of the said ships shall keep.

Person possessed of several places shall make his election which to abide in, and give his resolution to any after-comer in 48 hours after demand.

In case of difference, admirals to proportion the place

A P P E N D I X.

5. And whereas several inhabitants in *Newfoundland*, and other persons, have, since the year of our Lord one thousand six hundred eighty-five, ingrossed and detained in their own hands, and for their own private benefit, several stages, cook rooms, beeches, and other places in the said harbours and creeks, (which before that time belonged to fishing ships) for taking of bait, and fishing and curing their fish, to the great prejudice of the fishing ships that arrive there in the fishing season, and sometimes to the overthrow of some of their voyages, and to the great discouragement of the traders there; be it further enacted by the authority aforesaid, That all and every such person and persons, as since the said year of our Lord one thousand six hundred eighty-five, have or hath taken, seized, or detained any such stage, cook-room, beech, or other place, for taking bait or fishing, or for the drying, curing, or husbanding of fish, shall, on or before the said twenty-fifth day of *March*, relinquish, quit, and leave, to the publick use of the fishing ships arriving there, all and every the said stages, cook-rooms, beeches, and other places, for taking bait and fishing, and for the dying, curing and husbanding of fish.

Persons who, since 1685, have detained any stage, cook room, etc. shall relinquish the same, to the publick use of fishing ships, etc.

No fisherman or inhabitant of *Newfoundland* to possess any stage, etc. until all fishing ships be provided, etc.

6. And for the preventing the ingrossing, and detaining, of all such stages, cook-rooms, beeches, and other places, by any person or persons for the time to come;

be it enacted by the authority aforesaid, That no fisherman or inhabitant in *Newfoundland*, or any other person or persons whatsoever, shall, at any time after the said twenty-fifth day of *March*, seize, take up, or possess any of the stages, cook-rooms, beeches, or other places, which, at any time since the said year of our Lord one thousand six hundred eighty-five, did or at any time hereafter shall belong to any fishing ship or ships, for taking bait or fishing, or for drying, curing, or husbanding of fish, before the arrival of the fishing ships out of *England, Wales, and Berwick*, and until all such ships shall be provided with stages, cook-rooms, beeches, and other places, for taking bait and fishing, and for drying, curing and husbanding of fish.

7. Provided always, That all such persons as since the twenty-fifth day of *March* one thousand six hundred eighty-five, have built, cut out, or made, (or at any time hereafter shall build, cut out, or make), any houses, stages, cook-rooms, train-fats, or other conveniences for fishing there, that did not belong to fishing ships since the said year one thousand six hundred eighty-five, shall and may peaceably and quietly enjoy the same to his or their own use, without any disturbance of or from any person or persons whatsoever. Proviso.

8. And be it further enacted by the authority

- By-boat keep-
ers not to
meddle with
house, stage,
etc. belonging
to any fishing
ships.

thority aforesaid, That all and every person or persons whatsoever, that shall go over with their servants to *Newfoundland*, to keep boats on a fishing voyage, commonly called *By-boat keepers*, shall not pretend to or meddle with any house, stage, cook-room, train-fat, or other conveniency, that did belong to fishing ships, since the year one thousand six hundred eighty-five, or shall be cut out or made by ships, from and after the said twenty-fifth day of *March*, one thousand seven hundred.

And to carry
two fresh men
in six.

Inhabitant
obliged to im-
ploy two such
fresh men.

Master of fish-
ing ship to
carry one
fresh man in
five:

and make
oath thereof.

9. And be it further enacted by the authority aforesaid, That every master of a by-boat or by-boats shall carry with him at least two fresh men in six, (viz.) one man that hath made no more than one voyage, and one man who hath never been at sea before; and that every inhabitant shall be obliged to employ two such fresh men, as the by-boat keepers are obliged for every boat kept by them; and further, that all masters of fishing ships shall carry with them, in their ship's company, at least one such fresh man that never was at sea before, in every five men they carry; and that the master of each such by-boat, and each such fishing ship, shall make oath before the collector, or other principal officer of the customs of the port or ports from whence such ship intends to sail, that each ship and by-boat's company have such fresh men therein as this act directs; and that the said officer or officers is and are hereby

hereby impowered and required to administer the aforesaid oath to the said masters of ships and by-boats, and give a certificate thereof under his hand, without any fee, gratuity, or reward for so doing.

Certificate gratis.

10. And be it further enacted by the authority aforesaid, That every master or owner of any fishing ship going to *Newfoundland* (after the said twenty-fifth day of *March*), shall have in his ship's company every fifth man a green-man (that is to say) not a seaman, or having been ever at sea before.

Every fifth man a green-man.

11. And be it further enacted by the authority aforesaid, That no person or persons whatsoever shall at any time, after the said twenty-fifth day of *March*, obliterate, expunge, cut out, deface, or any wise alter or change the mark or marks of any boat or boats, train-fat, or train-fats, belonging to any other person or persons, whereby to defraud or prejudice the right owner or owners thereof, nor convert to his or their own use any boat or boats, train-fat or train-fats, belonging to any other person or persons, without his or their consent and approbation, nor remove nor take away any such boat or train-fat from the place or places where they shall be left by the owner or owners thereof, except in case of necessity, and also upon giving notice thereof to the admiral of the harbour or place where such boat or train-fat

Marks of boats or train-fats not to be obliterated, etc. without consent of owner.

fat shall be left by the owner or owners, to the end that the right owners thereof may know what is become of them.

Standing trees
not to be rind-
ed, nor woods
fired.

Necessary fuel
excepted, *etc.*

Sayns not to
be annoyed,

nor nets,
baits, *etc.*
stolen.

12. And be it enacted by the authority aforesaid, That no person or persons whatsoever shall, at any time after the said twenty-fifth day of *March*, rind any of the trees there standing or growing upon any occasion whatsoever, nor shall by any ways or means whatsoever set on fire any of the woods of the said country, or do, or cause to be done, any damage, detriment, or destruction to the same, for any use or uses whatsoever, except only for necessary fuel for the ships and inhabitants, and for the building and necessary repairs of houses, ships, boats, and train-fats, and of the stages, cook-rooms, beeches, and other places, for taking bait and fishing, and for drying, curing, and husbanding fish there; and also that no person or persons whatsoever shall, at any time after the said twenty-fifth day of *March*, cast anchor, or do any other matter or thing, to the annoyance or hindring of the haling of sayns in the accustomed baiting places, or shoot his or their sayn or sayns within or upon the sayn or sayns of any other person or persons whatsoever; and also that no person or persons whatsoever shall, at any time after the said twenty-fifth day of *March*, steal, purloin, or take out of the net or nets of any other person or persons whatsoever, lying adrift, or drover for bait
by

by night, nor steal, purloin, or take away any bait out of any fishing boat or boats, or any net or nets belonging to any other person or persons.

13. And whereas several persons that have been guilty of thefts, robberies, murders, and other felonies, upon the land in *Newfoundland*, and the islands thereunto adjacent, have many times escaped unpunished, because the trial of such offenders hath heretofore been ordered and adjudged in no other court of justice, but before the Lord High Constable and Earl Marshal of *England*; for reformation thereof, and for the more speedy and effectual punishment of such offences for the time to come, be it enacted by the authority aforesaid, That all robberies, murders, and felonies, and all other capital crimes whatsoever, which, at any time or times after the said twenty-fifth day of *March*, shall be done and committed in or upon the land in *Newfoundland*, or in any of the Islands thereunto belonging, shall and may be inquired of, tried, heard, determined, and adjudged in any shire or county of this kingdom of *England*, by virtue of the King's commission or commissions of *oyer and terminer*, and gaol delivery, or any of them, according to the laws of this land used for the punishment of such robberies, murders, felonies, and other capital crimes done and committed within this realm.

Robberies, etc.
in *Newfoundland* may be
tried in any
county in
England, by
commission of
oyer and terminer.

14. And

Admirals in
Newfoundland
to see the rules,
etc. in this
act executed,

keep a jour-
nal, etc. and
deliver a copy
thereof to the
Privy Council.

Admirals to
determine
differences
between ma-
sters of fishing
ships and in-
habitants.

14. And be it further enacted by the authority aforesaid, That the admirals of and in every port and harbour in *Newfoundland*, for the time being, be and are hereby authoris'd and required (in order to preserve peace and good government amongst the seamen and fishermen, as well in their respective harbours, as on the shore) to see the rules and orders in this present act contained, concerning the regulation of the fishery there, duly put in execution; and that each of the said admirals do yearly keep a journal of the number of all ships, boats, stages, and train-fats, and of all the seamen belonging to and imployed in each of their respective harbours, and shall also (at their return to *England*) deliver a true copy thereof, under their hands, to his Majesty's most honourable Privy Council.

15. And be it further enacted by the authority aforesaid, That in case any difference or controversy shall arise in *Newfoundland*, or the islands thereunto adjoining, between the masters of fishing ships and the inhabitants there, or any by-boat keeper, for or concerning the right and property of fishing rooms, stages, flakes, or any other building or conveniency for fishing or curing of fish, in the several harbours or coves, the said differences, disputes, and controversies, shall be judged and determined by the fishing admirals, in the several harbours and coves; and in
case

case any of the said masters of fishing ships, by-boat keepers, or inhabitants, shall think themselves aggrieved by such judgement or determination, and shall appeal to the commanders of any of his Majesty's ships of war, appointed as convoys for *Newfoundland*, the said commander is hereby authorised and impowered to determine the same, pursuant to the regulation in this act.

Party aggrieved may appeal.

16. And to the end that the inhabitants, fishermen, seamen, and all and every other person and persons residing or being at *Newfoundland*, or any the said islands, or other places, may with all devotion join their solemn prayers and addresses to Almighty God, for the obtaining of his blessing upon their persons and endeavours; be it hereby enacted, That all and every the inhabitants of *Newfoundland*, or the said islands or places adjacent near thereto, shall strictly and decently observe every Lord's Day, commonly called *Sunday*, and that none of the said inhabitants (who keep any tavern, alehouse, or other publick house for entertainment) shall entertain or sell, vend, utter, or dispose of, to any fisherman, seaman, or other person whatsoever, upon any Lord's Day or *Sunday*, any wine, beer, ale, cyder, strong waters, or tobacco, or any other liquor or liquors whatsoever.

Inhabitants to observe the Lord's Day, and not sell any liquors thereon.

17. And whereas by an act of Parliament,

8 & 9 W. III.
c. 24.

ment, made in the eighth and ninth years of his Majesty's reign, intituled, *An act for granting to his Majesty a further subsidy of tunnage and poundage upon merchandizes imported, for the term of two years and three quarters, and an additional land tax for one year for carrying on the war against France;* and by another act, made in the ninth and tenth years of his Majesty's reign, in-

9 & 10 W. III.
c. 23.

tituled, *An act for granting to his Majesty a further subsidy of tunnage and poundage, towards the raising a yearly sum of seven hundred thousand pounds, for the service of his Majesty's household, and other uses therein mentioned, during his Majesty's life, an additional duty of twelve-pence on every twenty shillings value of all goods and merchandizes imported (all manner of fish English taken excepted) is granted to his Majesty, his heirs and successors: And whereas some doubt hath arisen, whether oil, blubber, and fins, taken and imported by the company of merchants of London trading to Greenland, are not liable to the said duty; be it therefore enacted by the*

Whale fins, oil, and blubber, imported by Greenland merchants, not liable to the duty of 12 d. per lb. charged in the tunnage acts, nor for whale fins, etc. taken in Newfoundland.

authority aforesaid, That all whale fins, oil, and blubber, taken and imported by the ships of the company of merchants of London trading to Greenland, were not nor are intended to be charged or made liable to the duty of twelve-pence for every twenty shillings value of goods imported, charged in the aforesaid acts, but that the whale fins, oil, and blubber, taken and imported as aforesaid, and also all whale fins, oil, and

and blubber of *English* fishing, taken in the seas of *Newfoundland*, or any of the seas belonging to any of his Majesty's plantations or colonies, and imported into this kingdom by any of his Majesty's subjects in *English* shipping, were, and are hereby declared to be free of the said duties, as all fish of *English* taking; the afore-said acts, or any thing therein contained to the contrary in any-wise notwithstanding.

15 GEO. III. Cap. 31.

An act for the encouragement of the Fisheries carried on from Great Britain, Ireland, and the British Dominions in Europe, and for securing the return of the fishermen, sailors, and others employed in the said fisheries, to the ports thereof, at the end of the fishing season.

Preamble.

WHEREAS the fisheries carried on by his Majesty's subjects of *Great Britain*, and of the *British* dominions in *Europe* have been found to be the best nurseries for able and experienced seamen, always ready to man the royal navy when occasions require; and it is therefore of the highest national importance to give all due encouragement to the said fisheries, and to endeavour to secure the annual return of the fishermen, sailors, and others employed therein, to the ports of *Great Britain*, and of his Majesty's dominions before-mentioned, at the end of every fishing season: Now, in order to promote these great and important purposes, and with a view, in the first place, to induce his Majesty's subjects to proceed early from the ports of *Great Britain* to the banks of *Newfoundland*, and thereby to prosecute the fishery on the said banks to the greatest advantage, may it please Your Majesty that it may be enacted; and be it enacted by the King's most excellent

excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That, from and after the first day of *January* one thousand seven hundred and seventy-six, the respective bounties herein-after mentioned shall be paid and allowed annually, for eleven years, for a certain number of ships or vessels employed in the *British* fishery on the banks of *Newfoundland*, under the limitations and restrictions herein-after expressed; that is to say, such vessels shall appear by their register to be *British* built, and owned by his Majesty's subjects residing in *Great Britain* or *Ireland*, or the islands of *Guernsey*, *Jersey*, or *Man*; and be of the burthen of fifty tons or upwards, and navigated with not less than fifteen men each, three-fourths of whom, besides the master, shall be his Majesty's subjects; and in other respects qualified, and subject to the same rules and restrictions, as are described by an act, made in the tenth and eleventh years of the reign of the late King *William* the third, (intituled, *An act to encourage the trade to Newfoundland*); and shall be fitted and cleared out from some port in *Great Britain* after the said first day of *January* one thousand seven hundred and seventy-six, and after that day in each succeeding year, and shall proceed to the banks of *Newfoundland*; and having caught a cargo of fish

After *Jan. 1*, 1776, bounties to be given to vessels fitted out from *Great Britain* or *Ireland* for the *Newfoundland* fishery,

qualified as by act 10 & 11 *Gul. III.*

[B]

upon

upon those banks, consisting of not less than ten thousand fish by tale, shall land the same at one of the ports on the southern or eastern side of the island of *Newfoundland*, between *Cape Ray* and *Cape de Grat*, on or before the fifteenth day of *July* in each year; and shall make one more trip at least to the said banks, and return with another cargo of fish caught there to the same port; in which case, the twenty-five vessels first arriving at the said island of *Newfoundland* from the banks thereof, with a cargo of fish caught there, consisting of ten thousand fish by tale at the least, and after landing the same at one of the ports within the limits before mentioned in *Newfoundland*, shall proceed again to the said banks, and return to the said island with another cargo of fish, shall be intitled to forty pounds each; and one hundred vessels which shall so arrive the next in order of time, on or before the said fifteenth day of *July* in each year, at the said island, with a like cargo, and shall proceed again to the said banks, and return from thence in the manner herein-before mentioned, shall be intitled to twenty pounds each; and one hundred other vessels which shall so arrive the next in order of time, on or before the said fifteenth day of *July* in each year, at the said island, with a like cargo, and shall proceed again to the said banks, and return from thence in the manner herein-before mentioned, shall be intitled

intituled to ten pounds each, upon the master or owner of such vessel's producing to the collector of his Majesty's customs at the port in *Great Britain* from whence such vessel was cleared out a certificate, under the hand and seal of the governor of *Newfoundland*, that the master of such vessel had produced to him a certificate under the hands of the collector and comptroller of the customs at the port from whence such vessel was cleared out, testifying that such vessel was duly qualified to proceed on such fishery, in pursuance of the before-mentioned act, made in the tenth and eleventh years of King *William* the third; and that it has been made appear to his satisfaction, by a certificate under the hand and seal of the naval officer of the district in *Newfoundland*, where such fish was landed, or where there is no naval officer, under the hand and seal of the commander of any of his Majesty's ships stationed there, or of such officer as the governor shall approve, specifying the time of such vessel's arrival, in manner before directed, that such vessel was intitled by the priority and time of her arrival to one or other of the bounties therein mentioned, as the fact may be; and that the master and mate of such vessel had made oath before such naval or other officer as aforesaid, that the number of fish taken on the first trip amounted to ten thousand at least by tale, that he had made two trips at least,

Certificates to be produced to the collector of customs from the governor of *Newfoundland*, of the qualification of ships, &c.

Masters and mates to make oath.

Certificates
and oaths to
be granted
and adminis-
tered with-
out fee.

Collectors of
customs to
pay the boun-
ties.

and that all the fish on both trips were caught on the banks of *Newfoundland*; which certificate and oath the said governor and naval or other officer as aforesaid are hereby impowered and required to grant and administer to the master and mate of such vessel without fee or reward; and upon delivering up the said certificate to such collector, the respective bounties therein mentioned shall be paid by such collector out of any money remaining in his hands arising by the duties of customs or other subsidies upon foreign goods imported into this kingdom; and in case such collector shall not have sufficient money in his hands to pay the said bounties, he shall certify the same to the commissioners of his Majesty's customs in *England* or *Scotland* respectively, who are hereby authorized and required to order the same to be paid by the receiver general of the customs, out of any money in his hands arising by any of the duties and revenues under their management respectively.

Any part of
Newfoundland
not in use may
be used for
curing and
drying fish.

2. And be it further enacted by the authority aforesaid, That for the better accommodation of the persons belonging to vessels employed in the *Newfoundland* fishery, it shall and may be lawful for the masters and crews belonging to any vessels fitted out and employed in that fishery in pursuance of this or any other act, to occupy and use, for the purpose of curing, salting,

salting, drying, and husbanding their fish, any vacant or void space whatever on any part of *Newfoundland* which is not then occupied and used for the said fishery, without any let, disturbance, or hinderance, from any person or persons whatsoever, although such unoccupied places may not before have been reputed ships rooms; and all such unoccupied places shall from henceforth be deemed and taken to be ships rooms, any custom or usage to the contrary notwithstanding.

3. And in order to induce his Majesty's subjects in *Great Britain* and *Ireland*, and the islands of *Guernsey*, *Jersey*, and *Man*, to carry on the whale fishery on the coasts of *Newfoundland*, and the seas adjacent, be it further enacted by the authority aforesaid, That the several bounties hereafter mentioned shall be allowed annually, for eleven years, for five vessels employed in that fishery, under the limitations and restrictions herein-after expressed; that is to say, such vessels shall appear by their register to be *British* built, and owned by his Majesty's subjects residing in *Great Britain*, *Ireland*, or the islands of *Guernsey*, *Jersey*, or *Man*, and navigated with three fourths of his Majesty's subjects of *Great Britain*, *Ireland*, or the islands of *Guernsey*, *Jersey*, or *Man*, besides the master, and shall be fitted and cleared out from some port in *Great Britain* or *Ireland*, or the islands of *Guernsey*, *Jersey*, or *Man*, after the first

What bounties are to be given to ships fitted out for the whale fishery.

Masters and
mates making
oath, *etc.*

day of *January* one thousand seven hundred and seventy-six, and after that day in each succeeding year, and shall take and kill one whale at least in the *Gulph of Saint Lawrence*, or on the coasts of *Labrador*, *Newfoundland*, or in any seas to the southward of the *Greenland* seas and *Davis's Streights*, and shall return within the same year to some port in *England* with the oil of such whale or whales so taken as afore-said; and on the master and mate of such vessel, and two of the mariners belonging to her, making oath before the collector and comptroller of the customs at the port of her arrival (which oath they are hereby authorized and required to administer), that such oil is the produce of one or more whale or whales taken and killed by the crew then belonging to such vessel, mentioning the time when she departed from *Great Britain*, *Ireland*, or the islands of *Guernsey*, *Jersey*, or *Man*, and from what port, and the time and place where such whale or whales was or were taken and killed, such oil may be landed without payment of any duty whatsoever; and the collector and comptroller of such port shall thereupon forthwith transmit such oath to the commissioners of his Majesty's customs at *London*, any four or more of whom are hereby authorized and required to order the receiver general of his Majesty's customs to pay, out of any money in his hands arising by any duties under their management, for the vessel which shall

to arrive in each year with the greatest quantity of oil taken as aforesaid, five hundred pounds; for the vessel which shall in like manner arrive in the same year with the next greatest quantity of oil so taken as aforesaid, four hundred pounds; for the vessel which shall in like manner arrive in the same year with the next greatest quantity of oil so taken as aforesaid, three hundred pounds; for the vessel which shall in like manner arrive in the same year with the next greatest quantity of oil so taken as aforesaid, two hundred pounds; and for the vessel which shall so arrive in the same year with the next greatest quantity of oil so taken as aforesaid, one hundred pounds; the said oil so to be imported by each of the said vessels being the produce of one whale at the least; which said several and respective bounties shall be paid by such receiver general, within two months after the expiration of each year in which such vessel shall arrive, to the owner or owners of such vessels so intitled thereto, or their assigns duly authorised to demand the same.

Receiver general of his Majesty's customs to pay the bounties.

4. And in order to obviate any doubts that have arisen, or may arise, to whom the privilege or right of drying fish on the shores of *Newfoundland* does or shall belong, under the before mentioned act, made in the tenth and eleventh year of the reign of King *William* the third, which right or privilege has hitherto only been

What persons are intitled to the privilege of drying fish on the banks of *Newfoundland*.

enjoyed by his Majesty's subjects of *Great Britain*, and the other *British* dominions in *Europe*; be it enacted and declared by the authority aforesaid, That the said right and privilege shall not be held and enjoyed by any of his Majesty's subjects arriving at *Newfoundland* from any other country except from *Great Britain*, or one of the *British* dominions in *Europe*.

Provisions,
and all neces-
saries for fish-
ing may be ex-
ported from
Ireland and
the *Isle of Man*,
to *Newfound-
land*, being
British or *Irish*
product or
manufacture.

5. And it is hereby further enacted by the authority aforesaid, That it shall and may be lawful for any of his Majesty's subjects residing in *Ireland* to ship and lade there, and to transport directly from thence to *Newfoundland*, or to any part of *America* where the fishery is now or shall hereafter be carried on, on board any ship or vessel which may lawfully trade or fish there, any provisions, and also any hooks, lines, netting, or other tools or implements necessary for and used in the fishery by the crews of the ships or vessels carrying out the same, and the craft belonging to and employed by such ships or vessels in the said fishery, such provisions, hooks, lines, netting, or other tools or implements, being the product and manufacture of *Great Britain* or *Ireland*, and that it shall and may be lawful for any of his Majesty's subjects residing in the *Isle of Man*, in like manner to export directly from thence any of the articles herein-before mentioned for the purpose aforesaid, such articles being the product or manufacture of *Great Britain*,

tain, or the said *Isle of Man*, any law, custom, or usage, to the contrary notwithstanding.

6. Provided always, and it is hereby further enacted by the authority aforesaid, That the master or other person taking charge of such ship or vessel shall produce to the proper officer of the customs in the colony or plantation where he shall arrive a certificate, under the hand and seal of the collector or other principal officer of the customs in the port where he shall have fitted out, that oath hath been made before him by the shipper of such provisions, hooks, lines, netting, or other tools and implements, that the same are of the product and manufacture of *Great Britain* or *Ireland*, or the *Isle of Man* respectively, as the fact may be, and that the several articles before mentioned, (except the provisions), specifying the quantities and particulars of each sort, are to be used in the fishery by the crews of the respective ship or vessel carrying out the same, and by the craft belonging to and to be employed by such ship or vessel in the said fishery, and for no other use or purpose whatsoever, (which oath and certificate such collector or other officer is hereby authorised and required to administer and grant without fee or reward); and on failure of producing such certificate, or if any such hooks, lines, netting, tools and implements, are used or disposed of for any other purpose,

Masters of vessels to produce certificates from the officer of customs, that the provisions, &c. are the product, &c. of *Great Britain* or *Ireland*.

On failure, &c. the ship to be forfeited.

purpose, the same, and the ship or vessel having the same on board, shall be liable to be seized and forfeited in the same manner as they would have been subject and liable if this act had not been made, any thing herein contained to the contrary notwithstanding.

No fishing ships, or any craft carrying necessaries for the fishery, to be liable to any restraint as to time of working,

nor to make any entry at the customhouse, &c.

7. And it is hereby further enacted by the authority aforesaid, That, from and after the first day of *January* one thousand seven hundred and seventy-six, all vessels fitted and cleared out as fishing ships in pursuance of this act, or of the before-mentioned act, made in the tenth and eleventh years of the reign of the late King *William* the third, and which shall be actually employed in the fishery there, or any boat or craft whatsoever employed in carrying coastwise, to be landed or put on board any ships or vessels, any fish, oil, salt provisions, or other necessaries, for the use and purpose of that fishery, shall not be liable to any restraint or regulation with respect to days or hours of working, nor to make any entry at the customhouse at *Newfoundland*, except a report to be made by the master on his first arrival there, and at his clearing out from thence; and that a fee not exceeding two shillings and sixpence shall and may be taken by the officers of the customs at *Newfoundland* for each such report; and that no other fee shall be taken or demanded by any officer of the customs there, upon any other

other pretence whatsoever, relative to the said fishery, any law, custom, or usage, to the contrary notwithstanding.

8. Provided always, and be it enacted, That in case any such fishing ship or vessel shall at her last clearing out from the said island of *Newfoundland* have on board, or export any goods or merchandise whatsoever, except fish, or oil made of fish, such ship or vessel, and the goods thereon laden, shall be subject and liable to the same securities, restrictions, and regulations, in all respects, as they would have been subject and liable to if this act had not been made, any thing herein-before contained to the contrary notwithstanding.

If ships have on board any other goods than fish or oil, &c. they shall be under the usual restrictions, &c.

9. And whereas by an act, made in the twenty-fifth year of the reign of King *Charles* the second, (intituled, *An act for the encouragement of the Greenland and Eastland Trades, and for the better securing the plantation trade*), and by other acts of parliament, it is lawful for any person or persons to import into *England* train oil or blubber of *Greenland*, and parts adjacent, and those seas, or of *Newfoundland*, or of any other his Majesty's colonies and plantations, made of fish, or of any other creature living in the seas, and whale fins caught in any ships or vessels truly and properly belonging to *England* or *Wales*, or town of *Berwick upon Tweed*, and imported in such ships, without paying any custom

Act 25 Car. II. allowing train oil, &c. to be imported duty-free, recited,

and after Sept.
1, 1775, ex-
tended to all
ships belong-
ing to *Great*
Britain, Ire-
land, Guernsey,
&c.

custom or duty for the same, which liberty, by a subsequent act of parliament, is extended to ships belonging to *Great Britain*; and it is reasonable that the same indulgence should be extended to oil and blubber of fish, and other creatures living in the sea, and to whale fins caught in any part of the ocean by ships belonging to *Great Britain, Ireland, and the islands of Guernsey, Jersey, and Man*; be it therefore enacted by the authority aforesaid, That, from and after the first day of *September* one thousand seven hundred and seventy-five, the liberty granted by the said act to import into this kingdom oil or blubber of fish, or other creatures living in the sea, or whale fins taken within the limits therein mentioned, duty-free, shall extend, and be construed to extend, to such oil or blubber, or whale fins, as shall be so taken in any part of the ocean by, and imported in any ship or vessel truly and properly belonging to his Majesty's subjects of *Great Britain, Ireland, or the islands of Guernsey, Jersey, or Man*, any law, custom, or usage, to the contrary notwithstanding.

After Sept 1.
1775, undress-
ed seal skins
may be im-
ported duty-
free.

10. And it is hereby further enacted by the authority aforesaid, That, from and after the first day of *September* one thousand seven hundred and seventy-five, it shall and may be lawful for any person or persons to import into this kingdom any raw and undressed seal skins taken and caught by the crews of vessels belonging to and fitted out
either

either from *Great Britain, Ireland, or the islands of Guernsey, Jersey, or Man* respectively, and whereof the captain or master and three-fourths at the least of the mariners are his Majesty's subjects, or by persons employed by the masters or owners of such vessels, without paying any custom, subsidy, or other duty for the same, any law or usage to the contrary notwithstanding.

II. Provided always, That nothing in this act shall extend, or be construed to extend, to give liberty of importing any such seal skins duty-free, unless the captain or person having the charge or command of such ship or vessel importing the same shall make oath before the collector or other principal officer of the customs at the port of importation, (who is hereby authorised and required to administer such oath), that all the skins imported in such ship or vessel were really and *bona fide* the skins of seals taken and caught by the crews thereof, or by persons employed by the master or owner of such ship or vessel, or of some other ship or vessel qualified as aforesaid; and such seal skins shall be also duly entered at the customhouse for the said port, and landed in the presence of the proper officer or officers of the customs appointed for that purpose; and on failure of any of these conditions, such skins shall be liable to pay the same duties as they would have been subject and liable to if this act had not been made, any thing herein

Not to extend to any seal skins except those imported by ships qualified as aforesaid,

and duly entered at the customhouse, &c.

herein contained to the contrary notwithstanding.

No shipmaster
to carry any
fishermen, &c.
as passengers
to any part of
the continent
of *America*
without per-
mission,

12. And whereas it has been a practice of late years for divers persons to seduce the fishermen, sailors, artificers, and others employed in carrying on the fishery, arriving at *Newfoundland*, on board fishing and other vessels from *Great Britain*, and the *British* dominions in *Europe*, to go from thence to the continent of *America*, to the great detriment of the fishery, and the naval force of this kingdom: Now, in order to remedy the said evil, and to secure the return of the said fishermen, sailors, artificers, and others, employed as aforesaid, to the *British* dominions in *Europe*, be it further enacted by the authority aforesaid, That, from and after the first day of *January* one thousand seven hundred and seventy-six, it shall not be lawful for the master, or person having the charge or command of any ship or vessel trading to or from any place within the government of *Newfoundland*, to carry or convey, as passengers, any such fishermen, sailors, artificers, and others, employed as aforesaid, from thence to any part of the continent of *America*, without the permission under the hand and seal of the governor of the said island of *Newfoundland*, under the penalty of forfeiting two hundred pounds for every such offence.

under the pe-
nalty of 200*l*.

Regulations
for persons
employing

13. And whereas in several acts, passed in the eleventh and twelfth years of *William* the
the

the third, the eighth of *George* the first, and second and twelfth of *George* the second, provision has been made to prevent seamen and mariners in the merchant service being wilfully left beyond sea, and to secure and provide for their return home to such part of his Majesty's dominions whereto they belong : and whereas, for want of such provisions being extended to seamen and fishermen going out as passengers to *Newfoundland*, and hired and employed in the fisheries carried on there, great numbers of them remain in that country at the end of every fishing season, who would otherwise return home, and some of them have frequently turned robbers and pirates ; for remedy of which evil, be it enacted by the authority aforesaid, That no person or persons whatsoever shall, from and after the first day of *January* one thousand seven hundred and seventy-six, employ, or cause to be employed at *Newfoundland*, for the purpose of carrying on the fishery there, any seaman or fisherman going as passengers, or any seaman or fisherman hired there, without first entering into an agreement or contract in writing with every such seaman or fisherman, declaring what wages such seaman or fisherman is to have, and the time for which he shall serve, which shall be signed by both parties ; wherein it shall be stipulated (amongst other things) that the person so hiring or employing shall be at liberty to reserve, retain, and deduct, and he is hereby authorised, required,

seamen or
fishermen at
Newfoundland.

required, and directed to reserve, retain, and deduct, out of the wages of every person so hired or employed, a sum of money equal to the then current price of a man's passage home, not exceeding forty shillings for each man, which money such hirer or employer shall, at the end of each fishing season, or at the expiration of the covenanted time of service of such seaman or fisherman, pay, or cause to be paid, to the master of a passage or other ship, who shall undertake or agree to carry such seaman or fisherman home to the country whereto he belongs, and shall also convey such seaman or fisherman to and on board such passage or other ship, taking the master's receipt for the passage money, which receipt he shall immediately thereupon deliver to such seaman or fisherman.

Employers to pay to fishermen, &c. only half of their wages, and the other half in bills, &c. at their return home.

14. And be it further enacted by the authority aforesaid, That no hirer or employer of any such seaman or fisherman shall pay or advance, or cause to be paid or advanced, to such seaman or fisherman, in money, liquor, and goods, or either of them, during the time he shall be in his service, more than one half of the wages which shall at any time be due to him; but such hirer or employer shall, and is hereby required and directed, immediately at or upon the expiration of every such man's covenanted time or service to pay either in money, or in good bills of exchange, payable

able either in *Great Britain* or *Ireland*, or in the country to which such seaman or fisherman belongs, the full balance of his wages, except the money herein-before directed to be retained for his passage home; and it shall not be lawful for any such hirer or employer to turn away or discharge any such seaman or fisherman, except for wilful neglect of duty, or other sufficient cause, before the expiration of his covenanted time of service; and in case the hirer or employer of any such seaman or fisherman shall refuse or neglect to comply with any of the terms herein-before mentioned, or shall otherwise offend against this act, every such person so offending shall forfeit and pay, for every such offence, besides the balance that shall be due to such seaman or fisherman, the money herein-before directed to be retained for his passage home, the sum of ten pounds, to the use of such person or persons who shall inform or sue for the same.

Penalty on employers neglecting to comply.

15. And be it further enacted by the authority aforesaid, That in all cases where disputes shall arise concerning the wages of any such seaman or fisherman, the hirer or employer shall be obliged to produce the contract or agreement in writing, herein-before directed to be entered into with every such seaman or fisherman.

If any dispute arise, employers obliged to produce the contract.

16. And be it further enacted by the authority aforesaid, That all the fish and
[C]

All fish and oil liable to the payment of wages.

oil which shall be taken and made by the person or persons who shall hire or employ such seaman or fisherman shall be subject and liable, in the first place, to the payment of the wages of every such seaman or fisherman.

Penalty on
seamen or
fishermen ab-
senting them-
selves from
their employ-
ers without
leave.

17. And be it further enacted by the authority aforesaid, That in case any such seaman or fisherman shall at any time wilfully absent himself from his duty or employ, without the leave and consent of his hirer or employer, or shall wilfully neglect or refuse to work according to the true intent and meaning of such contract or agreement, he shall, for every day he shall so absent himself, or neglect or refuse to work as aforesaid, forfeit two days pay to such hirer or employer; and if any such seaman or fisherman shall wilfully absent himself from his said duty or employ for the space of five days, without such leave as aforesaid, he shall be deemed a deserter, and shall forfeit to such hirer or employer all such wages as shall at the time of such desertion be due to him, (except so much as is herein-before directed to be reserved and retained for the purpose of paying his passage home); and it shall and may be lawful to and for the governor of *Newfoundland*, or his surrogates, or the commissary of the vice admiralty court for the time being, or for any justice of the peace in *Newfoundland*, to issue his or their warrant or warrants to apprehend every such

deserter, and on the oath of one or more credible witness or witnesses to commit him to prison, there to remain until the next court of session which shall be holden in pursuance of the commission of the said governor for the time being; and if found guilty of the said offence at such session, it shall and may be lawful to and for the said court of session, to order such deserter to be publicly whipped as a vagrant, and afterwards to be put on board a passage ship, in order to his being conveyed back to the country whereto he belongs.

18. And be it farther enacted by the authority aforesaid, That all disputes which shall arise concerning the wages of every or any such seaman or fisherman, and all offences which shall be committed by every hirer or employer of such seaman or fisherman, against this act, shall and may be enquired into, heard, and determined, and the penalties and forfeitures thereby incurred shall and may be recovered in the court of session herein before mentioned, or in the court of vice admiralty having jurisdiction in the said island of *Newfoundland*.

Disputes, and all offences, to be determined by the court of session, etc. at *Newfoundland*.

19. And whereas by an act of parliament, passed in the sixth year of the reign of her late Majesty Queen *Anne*, intituled, *An act for the encouragement of the trade to America*, it is amongst other things enacted,

Act 6 *Anne*, respecting sailors employed in trading ships, etc. in *America* not liable to be impressed, repealed.

acted, That no mariner or other person who shall serve on board, or be retained to serve on board any privateer, or trading ship or vessel, that shall be employed in any part of *America*, nor any mariner or other person being on shore in any part thereof, shall be liable to be impressed or taken away by any officer or officers of or belonging to any of her Majesty's ships of war, impowered by the lord high admiral, or any other person whatsoever, unless such mariner shall have before deserted from such ship of war: and whereas the said privilege or exemption so given by the said act to mariners serving on board ships or vessels employed in any of the seas or ports of the continent of *America*, or residing on shore there, is prejudicial to the fisheries carried on by his Majesty's subjects of *Great Britain* and *Ireland*, and others his Majesty's dominions in *Europe*, and has proved an encouragement to mariners belonging thereto to desert in time of war, or at the appearance of a war, to the *British* plantations on the said continent of *America*; be it therefore enacted by the authority aforesaid, That the said clause, so far as it relates to the exempting of mariners or other persons serving, or retained to serve, in any ship or vessel in the seas or ports of the continent of *America*, or other persons on shore there, from being impressed, be and the same is hereby repealed.

And whereas the immoderate use of rum and other spirits, imported into Newfoundland from his Majesty's colonies and plantations in America has been found to be highly detrimental to the fisheries carried on there, and it is therefore proper to endeavour to diminish the consumption thereof; be it enacted by the authority aforesaid, That, from and after the first day of January one thousand seven hundred and seventy-six, there shall be paid into his Majesty, his heirs and successors, for every gallon of rum, or other spirits, which shall be brought or imported into the island of Newfoundland from any British colony or plantation on the continent of America, the sum of one shilling sterling money of Great Britain; and the same shall be collected, recovered, and paid, to the amount of the value of which such nominal sum bears in Great Britain; and may be received and taken according to the proportion and value of five shillings and sixpence the ounce in silver; and the said duty hereby granted shall be raised, levied, collected, paid, and recovered, in the same manner and form, and by such rules, ways, and means, and under such penalties and forfeitures, except in such cases where any alteration is made by this act, as any other duties payable to his Majesty upon goods imported into any British colony or plantation in America are raised, levied, collected, paid, and recovered, by any act or

Rum, &c. imported into Newfoundland from America, to pay a duty of 1 s. per gallon.

How such duty is to be collected, recovered, and applied.

acts of parliament, as fully and effectually, to all intents and purposes, as if the several clauses, powers, directions, penalties and forfeitures relating thereto, were particularly repeated and again enacted in the body of this present act; and that all the monies that shall arise by the said duty, (except the necessary charges of raising, collecting, levying, recovering, answering, paying, and accounting for the same), shall be paid into the receipt of his majesty's exchequer, and applied and appropriated to the same uses and purposes as the duties arising by that part of the customs, commonly called *The Old Subsidy*, payable in *Great Britain*, are applied and appropriated.

After Dec. 25,
1775, bounties
granted by
A^d 11 Geo. III.
extended to
Ireland.

21. And whereas the bounties given by an act of parliament made in the eleventh year of the reign of his present Majesty, intituled, *An act for the better support and establishment of the Greenland and whale fisheries*, have been found of great advantage to the navigation, trade, and manufactures of this kingdom; and it is just and expedient that the like bounties which are granted by that act to ships fitted out from *Great Britain*, or any of his Majesty's dominions in *America*, for those fisheries, should, in like manner, be granted to ships fitted out for that purpose from the kingdom of *Ireland*; be it therefore enacted by the authority aforesaid, That, from and after the twenty-fifth day of
December

December one thousand seven hundred and seventy-five, the respective bounties hereinafter mentioned shall be allowed for every ship or vessel *British*-built, and owned by his Majesty's subjects of *Ireland*, and whereof the captain or master and at least one-third of the mariners are his Majesty's subjects of *Great Britain* or *Ireland*, which shall proceed from any port in the said kingdom of *Ireland*, within the time limited by this act on the whale fishery to the *Greenland* seas, and *Davis's Streights*, and the adjacent seas, under the several rules and restrictions, herein-after expressed: that is to say, every such ship or vessel, before she proceeds on such voyage, shall be visited by the proper officer or officers of the customs belonging to such port, who shall examine into such ship or vessel, and take an account of the tonnage thereof by admeasurement, and shall certify such his or their visitation, examination, and admeasurement, to the commissioners of his Majesty's revenue in *Ireland*; and if it appears by the certificate of such officer or officers that she hath on board such a number of men, provisions, boats, fishing lines, and instruments to be used in such fishery as herein-after are mentioned; that she is strongly built, and otherwise a proper ship for such voyage and fishery, and hath on board among her crew a sufficient number of harpooners, steersmen, and line-managers, who have been before employed in such voyages, (the names of

Officers to certify that ships are properly fitted out, before they proceed on their voyage.

such persons to be contained in such certificate); and if it further appears by the oath of one or more owner or owners, and of the master or chief officer of such ship, written at the foot of such certificate, and made before the collector or comptroller of such port, (who are hereby empowered and required to administer the same), that it is really and truly their firm purpose and determined resolution, that such ship shall, as soon as licence shall be granted, forthwith proceed, so manned, furnished, and accoutered, on a voyage to the *Greenland Seas*, or *Davis's Streights*, or the seas adjacent, and there, in the then approaching season, to use the utmost endeavours of themselves and their ship's company to take whales, or other creatures living in the sea, and on no other design or view of profit in such voyage, and to import the whale fins, oil, and blubber thereof, into the kingdom of *Great Britain*, (naming the port to which it is their intention to return); and if the master, after such certificate had, and oath made, do also become bound, with two sufficient securities, unto his Majesty, his heirs and successors, in the penalty of such sum as shall be equal to treble the bounty intended by this act, (which bond the said collector, with the approbation of the comptroller, is hereby required to take, and is to be in force for the term of three years against the master and sureties for the faithful dealings of the said

said master and ship's company in regard to the said ship and voyage), then, and in all such cases, it shall and may be lawful for any three or more of the said commissioners of the revenues in Ireland for the time being, on receiving such certificates and oaths made, and it being certified to them by the collector and comptroller of such port, that sufficient security hath been given as aforesaid, to give and grant, and they are hereby required to give and grant to the master and owners of such ship, full licence and authority to proceed on such voyage as aforesaid.

Commissioners of the revenues in Ireland, on receiving such certificates, to grant licence, &c.

22. And to prevent any disputes that may arise whether a ship be properly qualified and duly fitted out for the whale fishery, according to the true intent and meaning of this act, and intituled to a certificate thereof from the custom-house officers, it is hereby enacted, That every ship of the burthen of two hundred tons, designed for this fishery, shall and is hereby obliged to have on board forty fishing lines of one hundred and twenty fathom each, forty harpoon irons, four boats with seven men, including a harpooner, a steersman, and a line manager, to each boat, making in the whole twenty-eight men besides the master and surgeon, with six months provision at the least for such number of men; and every ship of larger burthen an increase of six men, one boat, ten such lines, and ten harpoon irons

What number of men, lines, boats, &c. ships of certain dimensions shall have on board.

more,

more, for every fifty tons above the said two hundred tons, together with provisions in proportion; and every ship which shall be so employed in the said fishery shall have on board an apprentice, indentured for the space of three years at the least, for every fifty tons burthen, who shall be accounted as one of the number of men required to be on board such ship as aforesaid.

On return of ships, proper officers to go on board, and inspect the cargo, &c.

and take an account of the names of the masters, harpooners, &c.

23. And be it further enacted by the authority aforesaid, That on the return of such ship to the port to which the master and mate declared on oath their intention to return, the proper officers of the customs at such port shall immediately repair on board, and view the condition of such ship and her lading, and certify the same, together with their observations thereon, as also of the real tonnage of the said ship; and the said officers are also to take an account or schedule of the names of the master, mate, and other persons on board, distinguishing therein the harpooners and persons more immediately employed in the said fishery, and to certify the same; and the master and mate shall make oath before the collector and comptroller, (who are hereby impowered and required to administer the same), on the back of, or annexed to the licence granted as aforesaid, which they are hereby then required to deliver up, that they did in pursuance thereof, mentioning the day of their departure, proceed on a voyage

voyage directly to the places aforesaid, and have not since been on any other voyage, or pursued any other design or view of profit; and that they did there (mentioning the time of their stay in those seas) use the utmost endeavour of themselves and their ship's company to take whales, and other creatures living in those seas; and that all the whale fins, oil, and blubber, imported (if any) in such ship, was really and *bonafide* caught and taken in the said seas by the crew of such ship only, or with the assistance of the crew of some other ship duly licensed for that voyage, pursuant to the directions of this act; all which schedule, certificate, licence, and oath, shall be transmitted by the collector and comptroller of such port to the respective commissioners of the customs for that part of *Great Britain* where such ships shall arrive; and such commissioners being fully satisfied of the faithful dealings of the master and other persons employed in such ships with respect to such voyage and fishery, shall, on demand, cause payment to be made to the master or owners, or to his or their assigns, by the receiver general of the customs for that part of *Great Britain* where such ship shall arrive, the bounty or premium following, according to the admeasurement of such ship duly certified as aforesaid; (that is to say), for every such ship as shall proceed on the said fishery, from the twenty-fifth day of *December* one thousand seven hundred and seventy-five,

Commissioners being satisfied of the faithful dealings of the master, &c. to pay the bounties as directed, according to the admeasurement of the ships.

five, to the twenty-fifth day of *December* one thousand seven hundred and seventy-six, the sum of forty shillings *per* ton; and for every such ship as shall proceed on the said fishery from the twenty-fifth day of *December* one thousand seven hundred and seventy-six, to the twenty-fifth day of *December* one thousand seven hundred and eighty-one, the sum of thirty shillings *per* ton; and for every such ship as shall proceed on the said fishery from the twenty-fifth day of *December* one thousand seven hundred and eighty-one, to the twenty-fifth day of *December* one thousand seven hundred and eighty-six, the sum of twenty shillings *per* ton.

Certain provisions respecting ships before any person be entitled to the bounty.

24. Provided always, and it is hereby further enacted by the authority aforesaid, That no person or persons shall be allowed or intitled to receive the bounty herein before granted, for any ship which shall proceed on the said whale fishery after the twenty-fifth day of *December* one thousand seven hundred and seventy-five, unless such ship shall sail from the port where she shall be surveyed, and cleared directly on her intended fishery, on or before the tenth day of *April* in each and every year, and shall continue with her crew in the *Greenland* seas, or *Davis's Straights*, or the adjacent seas, diligently endeavouring to catch whales, or other creatures living in those seas, and shall not depart from thence before the tenth day of *August* then following,

ing, unless such ship shall be laden with the blubber and fins of one whale, caught by the crew thereof, or with the assistance of the crew of some other licensed ship, before that time, or shall be forced by some unavoidable accident or necessity to depart sooner from thole seas; which accident or necessity shall be verified on the oaths of the master and mate belonging to such ship, upon her return from the said fishery, before the collector and comptroller of the customs at the port where she shall arrive, who shall transmit the same, together with the schedule, licence, and other documents by this act required, to the respective commissioners of the customs for that part of Great Britain where she shall arrive.

25. And be it further enacted by the authority aforesaid, That it shall and may be lawful to and for the commissioners of the customs in *England* and *Scotland* respectively to order the respective receivers general of the customs, in case the monies remaining in their hands arising from the old subsidy shall not be sufficient at any time or times, during the continuance of this act, to satisfy the said bounty of forty shillings *per ton*, and thirty shillings *per ton*, and twenty shillings *per ton*, during the several periods herein-before limited, payable on all ships employed in the said fishery, according to the directions of this present act, to pay the same out of any money that shall be in their hands arising from

If monies arising from the old subsidy be not sufficient to pay bounties, any other revenue money may be taken.

from any of the duties and revenues under their management respectively.

Commissioners, at the beginning of every session of parliament, to lay before them an account of the ships employed in the whale fishery, &c.

26. And be it further enacted by the authority aforesaid, That the commissioners of his Majesty's customs in *England* and *Scotland* respectively shall, at the beginning of every session of parliament, lay before both houses of parliament an account in writing, under their hands, of what number of ships employed in the whale fishery to *Davis's Streights* and the *Greenland seas*, in pursuance of this act, with their respective names and burthens, have returned to *Great Britain*, and at what port in *Great Britain* they were discharged, and also what quantity of oil, blubber, or whale fins, each ship shall have imported, and from what port in *Ireland* or the *Isle of Man* they were fitted out.

Ships under 200 tons intitled to a bounty proportionable to their admeasurement.

27. And whereas it hath been found by experience, that ships under the burthen of two hundred tons are fit for the said fishery; be it therefore enacted and declared by the authority aforesaid, That every owner or owners of any ship or ships under the burthen of two hundred tons; which shall be employed in the said fishery, who have conformed themselves in all respects to the rules and directions herein-before prescribed to the owners of ships of two hundred tons, shall be intitled to the said bounty, as herein-before limited, according to

to the admeasurement of such ship or ships respectively.

28. Provided always, and be it enacted by the authority aforesaid, That no ship to be employed in the said fishery, although she be above the burthen of four hundred tons, shall be intitled to a larger bounty than a ship of four hundred tons would be intitled to.

Ships above 400 tons not intitled to a larger bounty than a 400 ton ship;

29. Provided also, That nothing in this present act contained shall extend, or be construed to extend, to oblige the owner or owners of any ship above the burthen of four hundred tons, in order to intitle him or them to the said bounty, to fit out, equip, and man, any such ship, otherwise than as a ship of the burthen of four hundred tons only is, by this present act, required to be fitted out, equipped, and manned.

and owners not obliged to equip, etc. more than a ship of 400 tons.

30. Provided also, and it is hereby further enacted by the authority aforesaid, That every apprentice indentured after the twenty-fifth day of *December* one thousand seven hundred and seventy-five, to serve on board any ship or vessel proceeding on the fisheries, in pursuance of this or any other act of parliament now in force, granting any bounty or bounties thereon, shall not exceed the age of eighteen years, nor be under fourteen, at the time he shall be so indentured; and that no bounty shall be allowed

No apprentice, when indentured, to exceed 18, nor be under 14 years;

and no bounty to be paid unless ships employed belong to some of his Majesty's subjects where fitted out.

allowed or paid for any ship or vessel so employed, either by virtue of this or any former act of parliament, unless the whole and entire property of such ship or vessel shall belong to some of his Majesty's subjects residing in that part of his Majesty's dominions from whence such ship or vessel shall be respectively fitted and cleared out, any law, custom, or usage, to the contrary notwithstanding.

Bounties may be insured.

31. And to prevent any application to parliament for the bounty on any ship employed in either of the fisheries before mentioned, which may happen to be lost at sea before their return to *Great Britain*, be it declared and enacted by the authority aforesaid, That it shall and may be lawful for the owner or owners of any ship, employed, or designed to be employed, in the said fisheries, or either of them, to insure the bounty which such owner or owners would have been intitled to upon the return of such ship to *Great Britain*, on the performance of all other matters directed and appointed by this present act to be performed for obtaining the said bounties.

Persons giving false certificates, &c. to forfeit 500*l*.

32. And it is hereby further enacted by the authority aforesaid, That if any person or persons shall give or grant any false certificate for any of the purposes required or directed by this act, such person or persons shall forfeit the sum of five hundred pounds,

pounds, and be rendered incapable of serving his Majesty, his heirs or successors, in any office whatsoever; and if any person or persons shall counterfeit, erase, alter, or falsify, any certificate required or directed by this act, or shall knowingly or willingly make use of any false certificate, or of any certificate so counterfeited, erased, altered, or falsified, such person or persons shall, for every such offence, forfeit the sum of five hundred pounds: and every such certificate shall be invalid, and of no effect:

33. And it is hereby further enacted by the authority aforesaid, That one moiety of the penalties and forfeitures inflicted by this act (except in such cases where other directions are given by this act) shall be to the use of his Majesty, his heirs and successors, and the other moiety to such officer or officers of the customs as shall sue or prosecute for the same in any of his Majesty's courts of record at *Westminster* or *Dublin*, or in the court of exchequer in *Scotland*, or in any court of admiralty, having jurisdiction in his Majesty's colonies or islands respectively, where the offence shall be committed.

Forfeitures
how to be ap-
plied.

34. And be it further enacted by the authority aforesaid, That, from and after the first day of *January* one thousand seven hundred and seventy-six, the penalties and forfeitures inflicted by any act of parliament relating to the trade or revenues of the

Forfeitures
incurred in
Newfoundland
to be sued for
in the vice ad-
miralty court
in said islands,

[D]

British

Persons ag-
grieved may
appeal to the
proper admi-
ralty court in
Britain.

British colonies or plantations in *America*, which shall be incurred in the said island of *Newfoundland*, shall be sued for, prosecuted, and recovered, in the court of vice admiralty having jurisdiction in the said island, and in no other; and if any person or persons shall think him or themselves aggrieved by any judgement, sentence, or determination of any court of vice admiralty, or other court having jurisdiction in *Newfoundland*, upon any suit or prosecution commenced there for any penalty or forfeiture inflicted by any act of parliament relating to the trade or revenues of the *British* colonies or plantations in *America*, it shall and may be lawful for such party to appeal from such judgement, sentence, or determination, in the first instance, to the proper court of admiralty in *Great Britain*, or to his Majesty in council; and that no appeal shall in such case lie or be brought in any other court or jurisdiction whatsoever, any law, custom, or usage, to the contrary notwithstanding.

Duties on
goods export-
ed or imported
to be under
the direction
of the commis-
sioners of
customs, etc.

35. And it is hereby further enacted by the authority aforesaid, That, from and after the first day of *January* one thousand seven hundred and seventy-six, the customs and other duties which now are or hereafter may be due and payable upon any goods or merchandizes brought or imported into, or exported or carried from, the island of *Newfoundland*, by virtue of this or any act or acts of Parliament, and the officers of
his

his Majesty's customs appointed for executing and carrying into execution the several laws relating to the trade and revenue there, shall be under the management and direction of the commissioners of his Majesty's customs in *England* for the time being, under the authority and direction of the high treasurer of *Great Britain*, or the commissioners of the treasury for the time being, any law, patent, custom, or usage, to the contrary notwithstanding.

36. Provided always, and it is hereby further enacted by the authority aforesaid, That all deputations and other authorities granted by the commissioners of the customs for *North America*, before the said first day of *January* one thousand seven hundred and seventy-six, to any officer or officers acting in and for the said island of *Newfoundland*, shall continue in force, as fully to all intents and purposes as if this act had not been made, until the deputations or other authorities so granted to such officer or officers respectively shall be revoked, annulled, or made void, by the high treasurer of *Great Britain*, or commissioners of the treasury for the time being.

Deputations granted by the commissioners for *North America* before *Jan. 1, 1776*, to any officers for *Newfoundland* to be in force.

37. And be it further enacted by the authority aforesaid, That if any action or suit shall be commenced against any person or persons for any thing done in pursuance of this act of parliament, the defendant or

Persons sued for any thing done in pursuance of this act may plead the general issue.

[D 2] defendants

A P P E N D I X.

and recover
treble costs.

defendants in such action or suit may plead the general issue, and give this act and the special matter in evidence at any trial to be had thereupon, and that the same was done in pursuance of and by the authority of this act: And if it shall appear so to have been done, the jury shall find for the defendant or defendants; and if the plaintiff shall be nonsuited, or discontinue his action after the defendant or defendants have appeared, or if judgement shall be given upon any verdict or demurrer against the plaintiff, the defendant or defendants shall recover treble costs, and have the like remedy for the same as defendants have in other cases by law.

26 GEO. III. Cap. 26.

An act to amend and render more effectual the several laws now in force for encouraging the fisheries carried on at Newfoundland, and parts adjacent, from Great Britain, Ireland, and the British dominions in Europe; and for granting bounties, for a limited time, on certain terms and conditions.

WHEREAS the bounties granted to a certain number of vessels employed in the *British* fishery on the banks of *Newfoundland*, by an act passed in the fifteenth year of the reign of his present Majesty, intituled, *An act for the encouragement of the fisheries carried on from Great Britain, Ireland, and the British dominions in Europe; and for securing the return of the fishermen, sailors, and others employed in the said fisheries, to the ports thereof, at the end of the fishing season,* will expire on the first day of *January* one thousand seven hundred and eighty-seven: And whereas, at the expiration thereof, it is expedient that new bounties should be granted, for a limited time, under certain conditions, limitations, and restrictions: And whereas it has been found by experience, that several of the provisions and regulations contained in the laws now in force for encouraging the fisheries, carried on at *Newfoundland*, and parts adjacent,

Preamble.

15 Geo. III.
Cap. 31.

After Jan. 1,
1787, boun-
ties to be
given to ves-
sels fitted out
from Great
Britain, &c.
for the New-
foundland
fishery,

qualified, etc.
agreeable to
10 & 11 Gul. III.
Cap. 25.

jacent, are insufficient to answer the good purposes thereby intended, and that it is requisite that other provisions and regulations should be enacted: To that end, be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That, from and after the first day of *January* one thousand seven hundred and eighty-seven, the respective bounties herein-after mentioned shall be paid and allowed annually, for ten years, to a certain number of ships or vessels employed in the *British* fishery on the banks of *Newfoundland*, under the limitations and restrictions herein-after expressed; that is to say, That such vessels shall appear by their register to be *British*-built, and wholly owned by his Majesty's subjects residing in *Great Britain*, *Ireland*, or the islands of *Guernsey*, *Jersey*, or *Man*; and shall be navigated each with a master, and at least three fourths of the mariners being *British* subjects, usually residing in his Majesty's *European* dominions; and shall be in other respects qualified and subject to the same rules and restrictions as are prescribed by an act, made in the tenth and eleventh years of the reign of King *William* the third, intituled, *An act to encourage the trade to Newfoundland*; and shall be fitted and cleared out from some port in *Great Britain*, or from the islands of *Guernsey*,

sey, Jersey, or Alderney, after the said first day of *January* one thousand seven hundred and eighty-seven, and after that day in each succeeding year, and shall proceed to the banks of *Newfoundland*; and having caught a cargo of fish upon those banks, consisting of not less than ten thousand fish by tale, shall land the same at any one of the ports on the north, the east, or the south side of the island of *Newfoundland*, between *Cape Saint John* and *Cape Raye*, on or before the fifteenth day of *July* in each year, and shall make one more trip, at least, to the said banks, and return with another cargo of fish caught there, to the same port: In which case, the one hundred vessels which shall first arrive at the island of *Newfoundland*, from the banks thereof, with a cargo of fish caught there, consisting of ten thousand fish by tale, at the least, and which, after landing the same at one of the ports within the limits before-mentioned in *Newfoundland*, shall proceed again to the said banks, and return to the said island with another cargo of fish, shall, if navigated with not less than twelve men each, be intitled to forty pounds each; but if any of the said one hundred vessels, so first arriving as aforesaid, shall be navigated with less than twelve men each, and not less than seven, they shall be intitled to twenty-five pounds each: Provided always, That if, in either of the cases before-mentioned, any of the one hundred vessels, so first

[D 4]

arriving

Bounties to be paid the first 100 vessels which shall arrive at *Newfoundland* with a cargo of fish:

Ditto to the
Second 100
Vessels which
shall so arrive.

arriving as aforesaid, shall be wholly navigated by men going out upon shares, that is to say, receiving a certain share of the profits arising from the voyage in lieu of wages, such of the said vessels as shall be so navigated by not less than twelve men each, shall be intitled to fifty pounds each; and if so navigated with a less number than twelve men, and not less than seven, shall be intitled to thirty-five pounds each. And further, that the one hundred vessels which shall next so arrive in order of time, on or before the said fifteenth day of *July* in each year, at the said island, with a like cargo, and shall proceed again to the said banks, and return from thence in the manner herein-before mentioned, shall, if navigated with not less than twelve men each, be intitled to twenty-five pounds each; but if such one hundred vessels, so arriving as aforesaid the next in order of time, shall be navigated each with less than twelve, and not less than seven men, they shall be intitled to eighteen pounds each: Provided also, That if, in either of the cases last mentioned, any of the vessels so arriving next in order of time as aforesaid, shall be so navigated wholly by men going out upon shares, that is to say, receiving a certain share of the profits arising from the voyage in lieu of wages, such of the said vessels, as shall be so navigated by not less than twelve men each, shall be intitled to thirty-five pounds each; and if so navigated with a less number than twelve men, and
not

not less than seven, shall be intitled to twenty-one pounds each; upon the master or owner of every such vessel respectively producing to the collector or other principal officer of his Majesty's customs at the port in *Great Britain* from whence such vessel was cleared out, or if cleared out from either of the said islands of *Guernsey*, *Jersey*, or *Alderney*, to the collector, or other principal officer of the customs in some port of *Great Britain*, a certificate under the hand and seal of the governor of *Newfoundland*, that the master of such vessel had produced to him a certificate, under the hands of the collector and comptroller of the customs at the port from whence such vessel was cleared out, or if cleared out from the islands of *Guernsey*, *Jersey*, or *Alderney*, under the hands of the governor, or deputy governor, and principal officer of the customs there, testifying that such vessel was duly qualified to proceed on such fishery in pursuance of the before recited act, made in the tenth and eleventh years of the reign of King *William* the third; and that it has been made to appear to his satisfaction, by a certificate under the hand and seal of the naval officer of the district in *Newfoundland* where such fish was landed, or where there is no naval officer, under the hand and seal of the commander of any of his Majesty's ships stationed there, or of such officer as the governor shall approve, specifying the time of such vessel's arrival in manner before directed,

Certificates to be produced to the collector of customs from the governor of *Newfoundland* of the qualification of ships, etc.

Masters and
mates to make
oath.

Collectors of
customs to
pay the boun-
ties.

Number of
mariners be-
longing to
each vessel to
be inserted in
the certificate
of qualifica-
tion.

directed, that such vessel was intituled, by the priority and time of her arrival, to one or other of the bounties therein mentioned, as the fact may be; and that the master and mate of such vessel had made oath, before such naval or other officer as aforesaid, that the number of fish taken on the first trip amounted to ten thousand at least by tale; that he had made two trips at least, and that all the fish on both trips were caught on the banks of *Newfoundland* by the crew of such vessel only; which certificate and oath the said governor, and naval or other officer as aforesaid, are hereby impowered and required to grant and administer to the master and mate of such vessel, without fee or reward; and upon delivering up the said certificate to such collector, the respective bounties therein mentioned shall be paid by such collector in such and the like manner, and out of the same funds, as the bounties herein-before mentioned to have been granted by the said recited act, made in the said fifteenth year of the reign of his present Majesty.

2. And be it further enacted by the authority aforesaid, That in each and every certificate of a ship being duly qualified as aforesaid to proceed on the said fishery, there shall be inserted the real number of the mariners then belonging to such vessel, and intended to be employed in the said fishery, distinguishing how many of them are new or green men, and whether they
are

are hired upon shares, or are to receive wages ; which facts are to be verified on the oath of the master of the vessel, made or taken before the person who shall grant the said certificate, and who is hereby authorised and required to administer the same, and to insert such facts in such certificate ; and if such vessels shall be cleared out from the said islands of *Guernsey, Jersey, or Alderney*, then such oath shall be taken before a magistrate of the royal court, in the presence of the principal officer of the customs who shall grant such certificate, the whole to be attested by the governor of each of the said islands respectively ; on failure whereof, such vessels shall be excluded from the benefit of this act, and shall not be intitled to or receive any of the bounties herein-before granted.

3. And be it further enacted by the authority aforesaid, That the several certificates to be given and affidavits taken in *Newfoundland* as aforesaid, in order to satisfy the said governor of the said island, as to the facts to ground his certificate thereupon, as herein-before directed, for the payment of the said bounties, shall and are hereby required, within the district of *Saint John's* in the said island of *Newfoundland*, to be transmitted to the said governor at *Saint John's*, before the fifteenth day of *September* in each year, and within any other district in the said island before the thirtieth day of *September* in

Certificates given and affidavits taken in *Newfoundland*, when to be transmitted to the governor.

in each year, in order that he may perfectly examine the documents, and thoroughly investigate the same, so as to be able clearly and justly to settle the times of the arrivals as aforesaid of the several and respective vessels, and adjust the different bounties, and to whom they are and ought severally to be paid.

Masters of vessels, previous to receiving the bounties, to make oath relative to the number of their men returned.

4. And be it further enacted by the authority aforesaid, That every master of a vessel, entitled to any of the bounties herein-before granted, shall, before he shall receive the same, or any part thereof, make oath before the collector and comptroller, or other chief officer at the port in *Great Britain* where he shall arrive on his return from the said fishery upon the banks of *Newfoundland*, that all the men belonging to his ship who sailed out with him, or a number of men equal thereto, are returned to *Great Britain*, unless any of his crew shall have died at *Newfoundland*, or in the said voyage, either on the passage out or return home, or have deserted without his knowledge or consent, or have been shipped in or on board *British* vessels bound for foreign markets; which facts shall also be verified on oath by every such master, before the said officers or officer of the customs, who are respectively hereby authorised and required to administer the same.

What proportion of their wages shall be

5. And whereas, by the said recited act, made in the fifteenth year of the reign of

of his present Majesty, it is enacted, That no hirer or employer shall pay or advance to any seaman or fisherman, or either of them, during the time he shall be in his service, more than half the wages which shall at any time be due to him: And whereas, in the case of green men, the advance of one half of the wages may not always be sufficient to fit them out and clothe them for the season; be it therefore enacted by the authority aforesaid, That it shall and may be lawful for the hirer or employer of any such green men engaged in the said fishery, to advance to any such green man, during the time he shall be in his service, a sum not exceeding five pounds, ten shillings, although the same shall amount to more than one half of the wages which shall be due to him, provided a sum equal to the then current price of a man's passage home, not exceeding forty shillings for each man, be reserved to bear the charge of his return home, as directed by the said before recited act of the fifteenth year of his present Majesty's reign.

advanced to green men during the time of their service.

6. And whereas in and by the said recited act, made in the fifteenth year of his present Majesty's reign, it is directed, That in case any seaman or fisherman shall at any time wilfully absent himself from his duty or employ, without the leave and consent of his hirer or employer, or the agent of such hirer or employer, or shall wilfully neglect or refuse to work, according to the true intent

Penalty on seamen, &c. absenting themselves from or neglecting their employ.

intent and meaning of his contract or agreement, he shall, for every day he shall so absent himself or neglect or refuse to work, forfeit two days pay to such owner or employer: And whereas the said penalties have been found insufficient; be it therefore enacted, That, where any such seaman or fisherman shall so wilfully absent himself from his duty or employ, without the leave or consent of his hirer or employer, or shall wilfully neglect or refuse to work, for the space of one day, he shall, for every day he shall so absent himself, or wilfully neglect or refuse to work, forfeit any number of days pay not exceeding five, as the said governor of *Newfoundland*, or his surrogate, may think just and reasonable; and such forfeiture shall be paid to the hirer or employer of such seaman or fisherman, in recompence for the loss or damage which he may have sustained by means of, or through such absence, neglect of duty, or refusal to work.

Master to be sworn before oil or blubber admitted to entry duty-free.

7. And be it further enacted by the authority aforesaid, That, before any oil or blubber, imported from *Newfoundland* into *Great Britain*, shall be admitted to entry duty-free, the master, or other person having or taking the charge or command of the ship or vessel importing the same, shall make oath before the collector, or other chief officer of the customs at the port in *Great Britain* into which the said oil or blubber is imported, (who is hereby authorised

thorised and required to administer such oath), that the same, and every part thereof, is really and *bona fide* the oil or blubber of fish or creatures living in the sea, actually caught and taken on the banks and shores of the island of *Newfoundland*, and parts adjacent, wholly by his Majesty's subjects carrying on the said fishery from his Majesty's *European* dominions, and usually residing in the said dominions; any law, custom, or usage, to the contrary notwithstanding.

8. And be it further enacted by the authority aforesaid, That, before any seal skins, imported from *Newfoundland* into *Great Britain*, shall be admitted to entry duty-free, the master, or other person having or taking the charge or command of the ship or vessel importing the same, shall make oath before the collector, or other chief officer of the customs at the port in *Great Britain* into which such seal skins are imported, (who is hereby authorised and required to administer such oath), that the same are really and *bona fide* the skins of seals actually caught and taken on the banks and shores of the said island of *Newfoundland*, and parts adjacent, wholly by his Majesty's subjects carrying on the said fishery from his Majesty's *European* dominions, and usually residing in the said dominions; any law, custom, or usage, to the contrary notwithstanding.

A similar oath to be taken relative to seal skins.

9. And

Clause relative
to oil, &c.
purchased at
Newfoundland,
and imported
from thence
into *Great*
Britain.

9. And be it further enacted by the authority aforesaid, That, in case any oil, blubber, or seal skins, shall be purchased in the said island of *Newfoundland*, or the parts adjacent, and imported into *Great Britain* from thence, the same shall and may be admitted to entry duty-free, provided the master or other person having or taking the charge or command of the ship or vessel importing the same, shall make oath of all and every the particulars respecting the purchase thereof, before the collector or other chief officer of the customs at the port in *Great Britain* into which such oil, blubber, or seal skins, are imported, (who is hereby authorised and required to administer such oath); and shall produce and deliver to such collector or other chief officer, a certificate, under the hand and seal of the naval officer of the district in *Newfoundland* where such oil, blubber, or seal skins, were purchased; or if there shall not be any naval officer at such place, then under the hand and seal of the commander of any of his Majesty's ships stationed there, testifying that oath had been made before him, (who is hereby authorised and required, in such case, to administer the same), by the person or persons who actually caught the fish from which the oil, blubber, or the seals from which the skins mentioned in such certificate was produced or came, that such oil or blubber was really and *bona fide* the oil or blubber of fish or creatures

tures living in the sea, or that such skins were really and *bona fide* the skins of seals, actually caught and taken on the banks and shores of the island of *Newfoundland*, and parts adjacent, wholly by his Majesty's subjects carrying on the said fishery from his Majesty's *European* dominions, and usually residing in the said dominions; and provided such master, or other person having or taking the charge or command of the ship or vessel so importing such oil, blubber, and seal skins, shall also make oath, before such collector or other chief officer, (who is hereby authorized and required to administer the same), that the oil, blubber, or seal skins so imported, are the same oil, blubber, or seal skins mentioned and referred to in the said certificate.

10. And be it further enacted by the authority aforesaid, That, upon the importation of any foreign salt into this kingdom from any place from whence, and in the manner in which such salt may be legally imported, the importer or proprietor of such salt shall be at liberty to give bond to his Majesty, his heirs and successors, for the payment of the duty commonly called *The Old Subsidy*, and all further subsidies, imposts, and duties, due and payable to and for the customs upon such salt, within the space of twelve calendar months from the date of such bond, but without any discount or allowance for prompt payment

Bond to be given to his Majesty for payment of the old subsidy, &c. on the importation of salt.

[E]

of

such bonds to
be cancelled,
&c. on ex-
portation
thereof within
12 months.

of the said duties, or either of them; which bond the collector and comptroller of his Majesty's customs at the port of importation are hereby authorised to take in his Majesty's name, and thereupon to permit such salt to be entered and landed in the usual manner; and if such salt shall be exported again within the said space of twelve calendar months, the bonds which shall have been given for the said duties thereon, shall be cancelled and discharged; and in case the full duties payable to the customs for such salt shall have been paid at or before the expiration of the said twelve calendar months, and such salt shall be afterwards exported into foreign parts within the time allowed by law, a drawback of all the said duties which were so paid shall be allowed in the same manner as the former drawback of the customs upon the exportation of salt was, could or might be paid; and such salt shall be subject and liable to the same rules, regulations, restrictions, securities, penalties, and forfeitures, (except where any alteration is made by this act), as such salt was subject and liable to by any act or acts of parliament in force before the making of this act.

Not to use
any sear or
net for catch-
ing cod whose
mesh is less
than four
inches in di-
mension.

11. And be it further enacted by the authority aforesaid, That it shall not be lawful to or for any person or persons concerned or employed in carrying on the said fishery, or for any seaman or fisherman hired

hired for the purpose of carrying on the said fishery, to use, or cause to be made use of, on the shores of the said island of *Newfoundland*, any sean or net of any kind or description whatsoever, for the purpose of catching cod fish by hauling such sean or net on shore, or tucking such sean or net into any boat or boats, the scale or mesh of which said sean or net shall be less in dimension than four inches, under the penalty of forfeiting the sum of one hundred pounds for every such offence; which offence may be heard and determined, and the penalty hereby incurred shall and may be recovered in the court of session of the said island, provided that such offence be complained of within the space of three calendar months after the commission of the same.

12. And whereas it is essential to the Preamble; naval strength of *Great Britain*, that the desertion of seamen and fishermen employed in the fishery of *Newfoundland*, and the parts adjacent, should be prevented: And whereas, by reason of their superior skill as seamen and fishermen, and as artificers of the implements and utensils necessary to the carrying on of such fisheries, they are, by great temptations, exposed to be seduced into the service and employ of the subjects of foreign states: And whereas the regulations and provisions made in and by an act, passed in the fifteenth year of his present Majesty's

[E 2] reign,

If any *British* seaman, &c. shall desert or agree to desert from *Newfoundland*, with intent to enter into the service of any foreign state, he may be committed, &c.

reign, herein-before mentioned, are not sufficient to prevent the desertion of such seamen and fishermen to the service of the subjects of foreign states; be it therefore enacted by the authority aforesaid, That if any seaman or fisherman, hired or employed in the carrying on of the said fishery, shall desert from the said island of *Newfoundland*, or from the said fishery, with intent to enter into the service of any foreign state, or of any of the subjects of any foreign state, or shall have in anywise agreed so to absent himself or desert, with such intent, or shall have actually entered into such service as aforesaid, it shall and may be lawful to and for the governor of *Newfoundland*, or his surrogates, or for the judge of the vice admiralty court for the time being, or for any justice of the peace in *Newfoundland* respectively, to issue his or their warrant or warrants to apprehend such person so deserting, or having agreed to desert as aforesaid, and on the oath or oaths of one or more credible witness or witnesses, to commit him to prison, there to remain until the next court of session which shall be holden in pursuance of the commission of the governor for the time being; and if found guilty of the said offence at such session, that it shall and may be lawful to and for the said court of session to order such deserter as aforesaid to be detained in prison, without bail or mainprize, for any time not exceeding three months, in case he shall have come from his Majesty's

jeſty's *European* dominions for the purpoſe of carrying on the fisheries aforeſaid.

13. Provided always, and be it enacted and ſent home: by the authority aforeſaid, That it ſhall and may be lawful for ſuch governor, within the ſpace of three months, if he ſhall ſee fit, or as ſoon after as conveniently may be, to cauſe every ſuch perſon ſo having deſerted, or agreed to deſert, to be put on board a paſſage ſhip or veſſel, in order to his being conveyed back to the country to which he belonged, and for which the maſter, or other perſon having or taking the charge or command of ſuch ſhip or veſſel, ſhall be paid in manner herein-after mentioned; and every maſter, or other perſon having or taking the charge or command of ſuch paſſage ſhip or veſſel, ſhall be, and is hereby required to take on board ſuch and ſo many of ſuch perſons as the ſaid governor ſhall direct, not exceeding four for each one hundred tons of the tonnage of ſuch ſhip or veſſel, and ſo in proportion for every ſuch ſhip or veſſel under one hundred tons: Provided nevertheless, That no perſon ſhall be ſo put on board of any ſhip or veſſel which ſhall not be of the burthen of forty tons: But if any perſon or perſons convicted of deſerting or agreeing to deſert as aforeſaid, ſhall not have come from his Maſteſty's *European* dominions for the purpoſe of carrying on the fisheries aforeſaid, then, and in ſuch caſe, that it ſhall and may be lawful for

and ſent home:

But if not from his Maſteſty's *European* dominions, he may be imprifoned for 12 months.

for the said court of session to commit such person or persons to prison, there to remain, without bail or mainprize, for any time not exceeding twelve calendar months.

Preamble.

14. And whereas it is of great importance to the trade, manufacture, and navigation of *Great Britain*, and of his Majesty's dominions in *Europe*, that all trade and mercantile intercourse between his Majesty's subjects, residing or carrying on fishery in the island of *Newfoundland* with the subjects of any foreign state, should be prohibited: And whereas it is essentially necessary to the preservation of the benefits arising from the fishery aforesaid, to prevent the sale of any ships, vessels, or boats, or of the tackle, apparel, or furniture of the same, and of all and all manner of utensils and implements, which are or may be used in catching and curing fish, and also of all articles and commodities of the growth, produce, and manufacture of the said island of *Newfoundland*, to the subjects of any foreign state, or to any other than the subjects of his Majesty, his heirs and successors, and also to prohibit the purchase of any goods or commodities whatsoever, from the subjects of any foreign state; be it therefore enacted by the authority aforesaid, That it shall not be lawful for any person or persons, residing in or carrying on fishery in the said island of *Newfoundland*, or on the banks thereof, there to sell, barter,

Fishermen at
Newfoundland
not to sell or
barter any
vessel, etc.
to or with any
foreigner.

barter, or exchange, any ship, vessel, or boat, of what kind or description soever, or any tackle, apparel, or furniture, used or which may be used by any ship, vessel, or boat; or any seans, nets, or other implements or utensils, used or which may be used in catching or curing fish, or any kind of bait whatsoever used or which may be used in the catching of fish; or any kind of fish, oil, blubber, seal skins, peltry, fuel, wood, or timber, to or with any person or persons whatsoever, other than the subjects of his Majesty, his heirs and successors.

15. And be it further enacted by the authority aforesaid, That if any person or persons residing or carrying on fishery in the said island of *Newfoundland*, shall there sell, barter, or exchange, or cause to be sold, bartered, or exchanged, or shall endeavour to sell, barter, or exchange, or shall be aiding or assisting in selling, bartering or exchanging, or causing to be sold, bartered, or exchanged, any such ship, vessel, boat, or any tackle, apparel, or furniture, used or which may be used for the purpose of navigating any ship, vessel, or boat; or any seans, nets, or other implements or utensils, used or which may be used in catching or curing fish; or any kind of bait whatsoever used or which may be used in catching fish; or any fish, oil, blubber, seal skins, fuel, wood, or timber, to any person or persons, being the subjects of any foreign state, it shall and may be lawful to and for the governor of *Newfoundland*,

Offenders
herein to be
committed;

and to forfeit
treble the va-
lue of the arti-
cles sold, etc.

foundland, or his surrogates, or for any justice of the peace in *Newfoundland*, to issue his or their warrant or warrants to apprehend every such offender, and, on the oath of one or more credible witness or witnesses, to commit him to prison, there to remain until the next court of session which shall be holden in pursuance of the commission of the said governor for the time being; and all and every such person or persons, if found guilty of the said offence at such session, shall forfeit and pay treble the value of the articles so sold or caused to be sold, or attempted to be sold as aforesaid, or bartered or taken in exchange, or in the selling, bartering, or exchanging of which, or causing to be sold, bartered, or exchanged, such person or persons was or were aiding or assisting, and the same shall be levied of the offender's goods and chattels, by warrant to be granted by the said court of session for that purpose; and in case no goods upon which such distress can be made shall be found, then it shall and may be lawful for the said court to order such person or persons to be punished and dealt with in the same manner as is herein-before directed with respect to deserters or persons agreeing to desert.

Such fisher-
men not to
purchase any
goods of, or
to barter with
foreigners for
the same.

16. And whereas it is highly injurious to the trade and manufactures of his Majesty's dominions in *Europe*, that persons residing or carrying on fishery in the island of *Newfoundland*, or parts adjacent, or on the banks of the said island of *Newfoundland*,

land, should be supplied with any goods or commodities whatsoever by the subjects of any foreign state; be it therefore enacted by the authority aforesaid, That no person or persons residing or carrying on fishery in the island of *Newfoundland*, or parts adjacent, or on the banks of the said island of *Newfoundland*, shall there purchase, or take in exchange, or by way of barter, or cause to be purchased, or taken in exchange, or by way of barter, or be aiding or assisting in the purchasing, bartering for, or taking in exchange, any goods or commodities whatsoever, from any person or persons being a subject or subjects of any foreign state; and that every person or persons residing or carrying on fishery in the said island of *Newfoundland*, or parts adjacent, or on the banks of the said island of *Newfoundland*, who shall there purchase, barter for, or take in exchange, or shall cause to be purchased, bartered for, or taken in exchange, any such goods or commodities in manner aforesaid, shall be apprehended and committed to prison, and, on due conviction, before the court of session, shall forfeit treble the value of such goods or commodities so purchased, or taken in barter or exchange, or procured to be purchased, or taken in barter or exchange, or in the purchase, barter, or taking of which in exchange, such person shall have been aiding or assisting, and the same shall be levied of the offender's goods and chattels, by warrant to be granted by the said court

Offenders to
be committed,
and to forfeit
treble the
value of the
goods.

of

of session for that purpose; and in case no goods upon which such distress can be made shall be found, then it shall and may be lawful for the said court to order such person or persons to be punished and dealt with in the same manner as is herein-before directed with respect to deserters or persons agreeing to desert.

Not to extend to the importation of bread, &c.

17. Provided always, That nothing herein contained shall extend, or be construed to extend, to hinder or prevent bread, flour, *Indian* corn, and live stock, from being imported into the said island of *Newfoundland* in certain *British* vessels, in pursuance of an act passed in this present session of Parliament.

No more than 40 s. to be paid for the passage of any person from *Newfoundland*, &c.

18. And be it further enacted by the authority aforesaid, That the sum for which the said governor shall agree with the master, or other person having or taking the charge or command of any ship or vessel, for the passage of any person or persons from the said island, to the place or places to which he or they belonged, shall in no case exceed the sum of forty shillings for each person, and shall be paid to the master of such ship or vessel out of the monies which shall arise from forfeitures incurred for any offence committed against this act, or the acts herein-before recited, upon such master producing, to the said court of session, a certificate, under the hand and seal of such governor, of the numbers and names

names of the persons respectively taken on board by his direction, and of the times they were taken on board respectively, and the several sums agreed to be paid as aforesaid; which sums the court of session are hereby required to cause to be paid to such master, if sufficient funds for that purpose shall remain in the hands of the said court.

19. And be it also enacted by the authority aforesaid, That if no sufficient fund for the payment of any sum or sums, so agreed upon as aforesaid, shall remain in the hands of the said court of session, then and in such case every such master or other person having or taking the charge or command of such ship or vessel, who shall have taken on board any number of persons by order of the governor, in manner herein-before directed, upon producing a certificate, under the hand and seal of the said governor, in manner herein-before directed, and making an affidavit at his return, setting forth the time during which he subsisted such person or persons, and that he did not, during that time, want any of his own complement of men, or how many he did want of such complement, and for what time, shall receive from the commissioners of the navy for the time being (who are hereby required to cause the same to be paid) sixpence *per diem* for the passage and provisions of such person or persons from the day of their embarkation homewards

Such payments, in case of a deficiency in the fund for that purpose, to be made by the commissioners of the navy.

homewards to the day of their arrival in Great Britain, the said sum of sixpence *per diem* only being deducted for such time and so many persons as he wanted of his complement during his voyage.

Recital of
4 Geo. III,
cap. 15.

20. And whereas it is enacted, in and by an act passed in the fourth year of his present Majesty's reign, intituled, *An act for granting certain duties in the British colonies and plantations in America; for continuing, amending, and making perpetual, an act passed in the sixth year of the reign of his late Majesty King George the second, intituled, An act for the better securing and encouraging the trade of his Majesty's sugar colonies in America; for applying the produce of such duties, and of the duties to arise by virtue of the said act, towards defraying the expences of defending, protecting, and securing the said colonies and plantations; for explaining an act made in the twenty-fifth year of the reign of King Charles the second, intituled, An act for the encouragement of the Greenland and Eastland trades, and for the better securing the plantation trade; and for altering and disallowing several drawbacks on exports from this kingdom, and more effectually preventing the clandestine conveyance of goods to and from the said colonies and plantations, and improving and securing the trade between the same and Great Britain; That if any British Ship or vessel shall be found standing into, or coming out from, either of the islands of Saint Pierre and Miquelon,*

or

or hovering or at anchor within two leagues of the coast thereof, or shall be discovered to have taken any goods or merchandizes on board at either of them, or to have been there for that purpose, such ship or vessel, and all the goods so taken on board there, shall be forfeited and lost, and shall and may be seized and prosecuted by any officer of his Majesty's customs; and the master, or other person having the charge of such ship or vessel, and every person concerned in taking such goods on board, shall forfeit treble the value thereof: And whereas the provisions of the said recited act may not be sufficient to effectuate the good purposes thereby intended, or to prevent the export or sale of ships, vessels, and boats, and of all other the goods and commodities herein before enumerated and prohibited to be sold to the subjects of any foreign state, or the purchase and import of the goods and commodities of such foreign states; be it therefore enacted by the authority aforesaid, That it shall and may be lawful for all and every officer or officers, having the command of any of his Majesty's ships stationed at the island of *Newfoundland*, to stop and detain all and every ship, vessel, or boat, of what nature or description soever, coming to, or going from the said island, and belonging to, or in the service or occupation of any of his Majesty's subjects residing in, trafficking with, or carrying on fishery in the island of *Newfoundland*, parts adjacent, or on the banks

Officers of his Majesty's ships stationed at *Newfoundland* may detain suspected vessels, and search them:

banks of the said island of *Newfoundland*, which he shall have reason to suspect to be going to, or coming from, the islands of *Saint Pierre* or *Miquelon*, for the purposes before mentioned, in any place within the limits of their station, and to detain, search, and examine, such ship, vessel, or boat; and that if, upon such search or examination, it shall appear to such officer or officers that there is reasonable ground to believe that such ship, vessel, or boat, or any tackle, apparel, or furniture, used, or which may be used, by any ship, vessel, or boat, or any implements or utensils used, or which may be used, in the catching or curing of fish, or any fish, oil, blubber, seal skins, fuel, wood, or timber, then on board of such ship, vessel, or boat, was or were intended to be sold, bartered for, or exchanged, to the subjects of any foreign state, or shall be discovered to have been so sold, bartered for, or exchanged; or if any goods or commodities whatsoever shall be found on board such ship, vessel, or boat, or shall be discovered to have been on board, having been purchased or taken in barter or exchange from the subjects of any foreign state; then, and in every such case, to seize and send back such ship, vessel, or boat, to the island of *Newfoundland*; and that such ship, vessel, or boat, and such goods and commodities so found on board, shall, upon due condemnation, be forfeited and lost, and shall and may be prosecuted for that purpose, by the officer or officers

so

and if any
contraband
goods are
found on
board, such
vessels and
goods shall
be forfeited.

so seizing the same, in the vice admiralty court of the said island of *Newfoundland*; such forfeiture to be given, one moiety to the said officer or officers, and the other moiety to the governor of *Newfoundland* for the time being, to be applied, under the direction of such governor, in defraying the passages home of such person or persons as by this or any former act are directed to be sent back to the country to which they belong.

21. And be it further enacted by the authority aforesaid, That, in case any libel, information, or other suit or proceeding whatsoever, shall be commenced and brought to trial, in the court of vice admiralty in the said island of *Newfoundland*, on account of the seizure of any ship, vessel, boat, or goods, for the condemnation of the same, for any of the causes herein before mentioned, wherein a decree shall be pronounced for or in favour of the defendant or defendants, claimer or claimers thereof, and it shall appear to the judge or court, before whom the same shall be tried, that there was a probable cause for seizing the said ship, vessel, boat, or goods, the judge before whom the said cause shall be tried shall certify on the record that there was a probable cause for the seizing of the said ship, vessel, boat, or goods; a copy of which certificate shall be delivered to the prosecutor, under the hands and seals of such judge or judges ;
and

Clause relative
to suits in
Newfoundland
on account
of the seizure
of vessels, &c.

and that, in such case, the defendant shall not be intitled to any costs of suit whatsoever, nor shall the person or persons who seized such ship, vessel, boat, or goods, be liable to any action, indictment, or other prosecution, on account of such seizure; and that if any action, indictment, or prosecution, shall be brought or preferred against any person or persons, who shall have obtained such copy of such certificate as aforesaid, in any of his Majesty's courts in *Great Britain*, such copy shall be admitted in evidence on behalf of the defendant or defendants, and shall have the like force and effect as the certificate on record would have had in the case of such action, indictment, or other prosecution, being brought or preferred in the island of *Newfoundland*.

Plaintiff gaining a verdict shall not be intitled to costs, if there was probable cause of seizure.

22. And be it also enacted by the authority aforesaid, That if any action, indictment, or other prosecution, shall be commenced and brought to trial against any person or persons whatsoever, on account of the seizure of any such ship, vessel, boat or goods, wherein a verdict shall be given against the defendant or defendants, if the court or judge before whom such action or prosecution shall be tried shall certify on the record that there was a probable cause of such seizure, that the plaintiff, besides his ship, vessel, boat, or goods, so seized, or the value thereof, shall not be intitled to above two-pence damages,

damages, nor to any costs of suit, nor shall the defendant in such prosecution be fined above one shilling.

23. And it is hereby further enacted by the authority aforesaid, That if any person or persons shall, at any time or times, be sued or prosecuted for any thing by him or them done or executed in pursuance of, or by colour of this act, or of any matter or thing in this act contained, such action or prosecution shall be commenced within the space of three months after the offence shall have been committed; and in case the person or persons making such seizure as aforesaid shall have quitted the said island of *Newfoundland* before the expiration of three months from the time of the offence committed, then that such action or prosecution shall be commenced within three months after his or their return to *Great Britain*; and such person or persons shall and may plead the general issue, and give this act and the special matter in evidence for his and their defence, and that the same was done, in prosecution and by authority of the said act: And if it shall appear so to have been done, then the court shall adjudge and decree, or the jury shall find, in the courts of *Great Britain* or *Newfoundland* respectively, for the defendant or defendants; and if the plaintiff shall be nonsuited, or discontinue his action, libel, or other proceedings in the courts of *Great Britain* or *Newfoundland*,

Limitation of actions.

General issue.

[F]

after

Treble costs.

after the defendant or defendants hath or have appeared, or if judgement shall be given upon any verdict or demurrer against the plaintiff, the defendant or defendants shall recover treble costs, and have the like remedy for the same as the defendant or defendants hath or have in other cases by law.

Fines and forfeited goods, &c. how to be applied.

24. And be it further enacted by the authority aforesaid, That all and every the fines or penalties inflicted by this act, or by the acts herein-before recited, and to be levied upon the seamen or fishermen, except those for neglect of duty; and that such ships, vessels, or goods, as shall be seized, condemned, and forfeited as before mentioned, except such the distribution whereof is otherwise directed by this act, shall be given, one moiety to the informer, and the other moiety to the Governor of *Newfoundland* for the time being, to be applied, under the direction of such Governor, in defraying the passages home of such person or persons as by this or any former act are directed to be sent back to the country to which they belong.

Part of the act of 15 Geo. III. repealed.

25. And be it further enacted by the authority aforesaid, That so much of the said recited act of the fifteenth year of the reign of his present Majesty, as gives any jurisdiction to the court of vice admiralty for the said island of *Newfoundland* with respect to enquiring into and determining disputes

disputes concerning the wages of any seamen or fishermen, or any offence committed by any hirer or employer of such seamen or fishermen, or any controversies or differences arising from their contracts or agreements, shall be, and the same is hereby repealed.

26. And be it further enacted by the authority aforesaid, That all and every the clauses, matters, and things in the said herein-before recited acts contained, which are not altered or repealed by this present act, shall continue and remain in full force.

The recited
acts (except,
&c.) to re-
main in force.

28 GEO. III. Cap. 35.

An act to enable his Majesty to make such regulations as may be necessary to prevent the inconvenience which might arise from the competition of his Majesty's subjects and those of the most Christian King, in carrying on the fishery on the coasts of the island of Newfoundland.

Preamble.

Treaty of
Utrecht re-
cited.

WHEREAS, by the thirteenth article of the treaty concluded at *Utrecht* on the fourth day of *April*, new stile, in the year of our Lord one thousand seven hundred and thirteen, between her late Majesty Queen *Anne* and the most Christian King *Louis* the fourteenth, it was, among other things, agreed, That the island called *Newfoundland*, with the adjacent islands, should, from that time forward, belong of right wholly to *Britain*, and to that end the town and fortress of *Placentia*, and whatever other places in the said island were in the possession of the *French*, should be yielded and given up, within seven months from the exchange of the ratification of that treaty, or sooner if possible, by the most Christian King, to those who had a commission from the Queen of *Great Britain* for that purpose; nor should the most Christian King, his heirs or successors, or any of their subjects, at any time thereafter, lay claim to any right to the said island and islands, or to any part of them; moreover,

moreover, it should not be lawful for the subjects of *France* to fortify any place in the said island of *Newfoundland*, or to erect any buildings there, besides stages made of boards, and huts necessary and useful for drying of fish, or to resort to the said island beyond the time necessary for fishing and drying fish: That it should be allowed to the subjects of *France* to catch fish, and to dry them on land, on that part only, and in none other besides that part of the island of *Newfoundland*, which stretches from the place called *Cape Bonavista*, to the northern point of the said island, and from thence running down by the western side, and reaches as far as the place called *Cape Riche*: And whereas, by the fifth article of the treaty of peace, concluded at *Paris* on the tenth day of *February* one thousand seven hundred and sixty-three, between his Majesty and the late most Christian King *Louis* the fifteenth, and his most Catholick Majesty, it was, among other things, agreed, that the subjects of *France* should have the liberty of fishing and drying on a part of the coast of the island of *Newfoundland*, such as is specified in the thirteenth article of the treaty of *Utrecht*, which article is confirmed and renewed by the present treaty; And whereas, by the fifth article of the definitive treaty of peace, concluded at *Versailles*, between his Majesty and the most Christian King, on the third day of *September* one thousand seven hundred and eighty-three,

Treaty of
Paris recited.

Treaty of
Versailles
recited.

it was, among other things, agreed, That his Majesty, the King of *Great Britain*, should be maintained in his right to the island of *Newfoundland*, and to the adjacent islands, as the whole were assured to him by the thirteenth article of the treaty of *Utrecht*, excepting the islands of *Saint Pierre* and *Miquelon*, which were ceded in full right, by the said treaty of the third day of *September* one thousand seven hundred and eighty-three, to his most Christian Majesty; and that his Majesty, the most Christian King, in order to prevent the quarrels which had before then arisen between the two nations of *England* and *France*, consented to remove the right of fishing which belonged to him in virtue of the aforesaid article of the treaty of *Utrecht*, from *Cape Bonavista* to *Cape Saint John*, situated on the eastern coast of *Newfoundland*, in fifty degrees north latitude; and his Majesty the King of *Great Britain* consented, on his part, that the fishery assigned to the subjects of his most Christian Majesty, beginning at the said *Cape Saint John*, passing to the north, and descending by the western coast of the island of *Newfoundland*, should extend to the place called *Cape Rage*, situate in forty-seven degrees and fifty minutes latitude: The *French* fishermen should enjoy the fishery which was assigned to them by the said article, as they had the right to enjoy that which was assigned to them by the treaty of *Utrecht*: And whereas, by a declaration delivered by his Majesty's ambassador

bassador extraordinary to his most Christian Majesty, bearing date also on the said third day of *September* one thousand seven hundred and eighty-three, his Majesty engaged not only to insure the execution of the last-mentioned treaty with his known good faith and punctuality, but to give all possible efficacy to such principles as may prevent dispute ; and, that the fishermen of the two nations may not give cause for daily quarrels, was pleased to engage that he would take the most positive measures for preventing his subjects from interrupting in any manner, by their competition, the fishing of the *French*, during the temporary exercise thereof which is granted to them upon the coasts of the island of *Newfoundland*, and that he would, for that purpose, cause the permanent settlements which should be formed there to be removed ; and that he would give orders that the *French* fishermen should not be incommoded in the cutting of wood necessary for the repair of their scaffolds, huts, and fishing boats ; and that the thirteenth article of the treaty of *Utrecht*, and the method of carrying on the fishery which had at all times been acknowledged, should be the plan upon which the fishery should be carried on there, and that it should not be deviated from by either party, the *French* fishermen building only their scaffolds, confining themselves to the repair of their fishing vessels, and not wintering there ; the subjects of his *Britannick* Ma-

Declaration to
 the *French*
 King of *Sept.*
 3, 1783, re-
 cited.

jeſty, on their part, not moleſting in any manner the *French* fiſhermen during their fiſhing, nor injuring their ſcaffolds during their abſence: And whereas it is expedient, in conformity to the definitive treaty of peace and the declaration aforeſaid, that his Maſteſty's ſubjects ſhould be prevented from interrupting in any manner, by their competition, the aforeſaid fiſhery of the ſubjects of his moſt Chriſtian Maſteſty, during the temporary exerciſe thereof which is granted to them on the coaſt of *Newfoundland*; and that all permanent eſtabliſhments on that part of the coaſt allotted to the *French* fiſhermen ſhould be removed; and that ſuch fiſhermen ſhould be in no manner moleſted, contrary to the tenor of the ſaid treaty, and the good faith thereof: In order, therefore, that his Maſteſty may be the better enabled to carry the ſaid ſeveral treaties and declarations into faithful and punctual execution, and to make ſuch regulations as may be expedient, reſpecting the fiſhery, in the manner herein-after mentioned, be it enacted by the King's moſt Excellent Maſteſty, by and with the advice and conſent of the Lords ſpiritual and temporal, and Commons, in this preſent Parliament aſſembled, and by the authority of the ſame, That it ſhall and may be lawful for his Maſteſty, his heirs and ſucceſſors, by advice of council, from time to time, to give ſuch orders and inſtructions to the governor of *Newfoundland*, or to any officer or officers on that ſtation, as he or they ſhall

His Maſteſty,
by advice of
council, may
give ſuch or-
ders to the
governor of
Newfoundland,
&c. as ſhall be

shall deem proper and necessary to fulfil the purposes of the definitive treaty and declaration aforesaid; and, if it shall be necessary to that end, to give orders and instructions to the governor, or other officer or officers aforesaid, to remove, or cause to be removed, any stages, flakes, train vats, or other works whatever, for the purpose of carrying on fishery, erected by his Majesty's subjects on that part of the coast of *Newfoundland* which lies between *Cape Saint John*, passing to the north, and descending by the western coast of the said island to the place called *Cape Rage*, and also all ships, vessels, and boats, belonging to his Majesty's subjects, which shall be found within the limits aforesaid, and also, in case of refusal to depart from within the limits aforesaid, to compel any of his Majesty's subjects to depart from thence; any law, usage, or custom, to the contrary notwithstanding.

deemed proper to fulfil the purposes of the treaty of *Versailles*, and the declaration to the *French King*, above recited.

2. And be it further enacted by the authority aforesaid, That if any person or persons shall refuse, upon requisition made by the governor, or any officer or officers acting under him, in pursuance of his Majesty's orders or instructions as aforesaid, to depart from within the limits aforesaid, or otherwise to conform to such requisition and directions as such governor, or other officer as aforesaid, shall make or give, for the purposes aforesaid, every such person or persons so refusing, or otherwise offending against

Persons refusing to conform to the directions of the governor, to forfeit 200*l*.

How penalties
are to be re-
covered and
applied.

Limitation of
suits.

against the same, shall forfeit the sum of two hundred pounds, to be recovered in the court of session, or court of vice admiralty in the said island of *Newfoundland*, or by bill, plaint, or information, in any of his Majesty's courts of record at *Westminster*; one moiety of such penalty to belong to his Majesty, his heirs and successors, and the other moiety to such person or persons as shall sue or prosecute for the same: Provided always, that every such suit or prosecution, if the same be commenced in *Newfoundland*, shall be commenced within three months, and if commenced in any of his Majesty's courts of record at *Westminster*, within twelve months from the time of the commission of such offence.

APPENDIX,

xc

29 GEO. III. Cap. 53:

An act for further encouraging and regulating the Newfoundland, Greenland, and southern whale fisheries.

WHEREAS, as well by immemorial
usage as by the provisions of former
laws, the right and privilege of drying fish
on the island of *Newfoundland* do not be-
long to any of his Majesty's subjects ar-
riving there, except from *Great Britain*, or
one of his Majesty's dominions in *Europe*;
for preventing frauds, and thereby better
securing to his Majesty's said subjects of
Great Britain; and of the other *British* do-
minions in *Europe*, the full advantages of
the fishery carried on from thence, and of
drying fish on the shores of the island of
Newfoundland, be it declared and enacted
by the King's most excellent Majesty, by
and with the advice and consent of the
Lords spiritual and temporal, and Com-
mons, in this present Parliament assem-
bled, and by the authority of the same,
That no fish, taken or caught by any of his
Majesty's subjects, or other persons, arriv-
ing at *Newfoundland* or its dependencies,
or on the banks of the said island, except
from *Great Britain*, or one of the *British*
dominions in *Europe*, shall be permitted to
be landed or dried on the said island of
Newfoundland,

Preamble,

No fish, unless
caught by sub-
jects of *Great*
Britain, or of
the *British* do-
minions in
Europe, to be
landed or dried
at *Newfound-*
land, the right
as ceded to the
French except-
ed.

Newfoundland, always excepting the rights granted by treaty to the subjects of his most Christian Majesty on that part of the island of *Newfoundland* beginning at *Cape Saint John*, passing to the north and descending by the western coast of the said island to the place called *Cape Raye*.

26 Geo. III.
cap. 41, re-
cited.

After Jan. 1,
1790, ships to
be entitled to
the bounties
granted by the
recited act,
that shall sail
by April 10,
yearly, tho'
they leave the
Greenland seas

2. And whereas it is thought expedient that the owners of ships employed in the *Greenland* fishery should be allowed to receive the bounty granted by an act, passed in the twenty-sixth year of his present Majesty's reign, intituled, *An act for the further support and encouragement of the fisheries carried on in the Greenland Seas and Davis's Streights*, although such ships depart from those seas before the tenth day of *August* then following, and although they be not laden with the quantity of whale fins, and of oil or blubber in proportion thereto, required by the said act, in case it shall appear by the log books of such ships that they have not departed from those seas till the end of sixteen weeks from the day they respectively sailed from the ports where they were surveyed and cleared out; be it therefore further enacted, That any owner or owners of any ship or vessel shall be allowed and intitled to receive the bounty granted by the said act, for any ship which shall have proceeded, or shall proceed upon the said whale fishery from any port of *Great Britain*, or the islands of *Guernsey*, *Jersey*, or *Man*, after the first day

day of *January* one thousand seven hundred and ninety, and shall have sailed, or shall sail from the port where she was surveyed and cleared out, directly on her intended voyage on or before the tenth day of *April* in each and every year, although she shall depart from the *Greenland* seas or *Davis's streights*, or the adjacent seas, before the tenth day of *August* then following, and although she shall not be laden, if of the burthen of three hundred tons, with thirty tons of oil, or blubber in proportion thereto, the blubber to be rated with respect to the oil as three to two, and one ton and a half of whale fins; or if she be of greater or lesser burthen, with a quantity of oil or blubber and whale fins in like proportion to the tonnage of such ship, being the produce of one or more whale or whales, caught by the crew thereof, or with the assistance of the crew of some other licensed ship, in case it shall appear by the log book of such ship that she had continued with her crew in the said seas, diligently endeavouring to catch whales or other creatures living in those seas, and did not depart from thence till the expiration of sixteen weeks from the time of her sailing from the port where she shall have been surveyed and cleared out; provided such ship shall not have touched at any other port during her voyage, and shall have complied with all the other regulations, conditions, and restrictions, imposed by the said act.

or *Davis's streights* before *Aug. 10* following, and shall not be laden agreeable to the regulations of the recited act, upon the conditions herein specified.

3. And

28 Geo. III, cap. 20, recited, and after passing this act the three ships entitled to the bounties thereby granted on doubling *Cape Horn*, or passing through the *Streights of Magellan* to be entitled thereto, if they shall not return in less than 16 months, and by Dec. 10, in the second year after clearing out.

3. And whereas by an act passed in the twenty-eighth year of his present Majesty's reign, intituled, *An act for amending an act, made in the twenty-sixth year of his present Majesty's reign*, for the encouragement of the southern whale fishery, and for making further provisions for that purpose, the three ships or vessels, which are intituled to the premiums therein granted on their doubling *Cape Horn*, or passing through the *Streights of Magellan*, are required not to return in less time than eighteen months, and it is thought sufficient that such ships or vessels should be obliged to continue out no longer than sixteen months; be it therefore further enacted by the authority aforesaid, That the owner or owners of such of the said three ships or vessels which shall sail after the passing this act, shall be intituled to the said additional premiums, granted by the said act of the twenty-eighth year of his present Majesty's reign, under the conditions, regulations, and restrictions, in the said act mentioned, in case such ships or vessels shall not return in less time than sixteen months, from the time of her clearing out, and on or before the first day of *December*, in the second year after that in which such ship or vessel shall have fitted and cleared out.

Owners of vessels complying with the other conditions of the

4. And whereas doubts have arisen whether the owner of any ship or vessel shall be intituled to the premiums granted by

by the said last mentioned acts passed in the twenty-sixth and twenty-eighth years of his present Majesty's reign, unless such ship or vessel shall have cleared out specially for the respective latitudes therein specified; be it further declared and enacted by the authority aforesaid, That the owner or owners of any ship or vessel shall not be obliged to clear out specially for the respective latitudes specified in the said acts, but shall be intitled to the premiums thereby granted, on complying with all the other conditions, regulations, and restrictions, imposed by the said acts.

recited acts, to be entitled to the premiums, tho' they do not clear out specially for the latitudes therein specified.

5. And whereas by an act, made and passed in the twenty-sixth year of the reign of his present Majesty, intituled, *An act for the further support and encouragement of the fisheries carried on in the Greenland Seas and Davis's Streights*, it is among other things enacted, That every ship shall have on board apprentices indentured for the space of three years at the least, who shall not exceed the age of eighteen years, nor be under fourteen years of age, at the time they shall be so indentured, in the proportion of one apprentice at the least for every thirty-five tons burthen, and one fresh or green man for every fifty tons burthen, which apprentices and fresh or green men shall be accounted in the number of men required to be on board such ship as aforesaid: And whereas by another act, made and

26 Geo. III, cap. 41.

26 Geo. III,
cap. 50,

and 28
Geo. III, cap.
20, recited.

and passed in the twenty-sixth year of his present Majesty's reign, intituled, *An act for the encouragement of the southern whale fishery*, it is among other things enacted, That no premium granted by that act shall be paid or allowed to any person or persons whatever, for or on account of any ship or vessel employed in the afore-said fishery, unless such ship or vessel shall have on board an apprentice indentured for the space of three years at the least, for every fifty tons burthen of such ship or vessel by admeasurement, every such apprentice not exceeding the age of eighteen years, nor being under fourteen years, at the time he shall be so indentured: And whereas by another act, made and passed in the twenty-eighth year of the reign of his present Majesty, intituled, *An act for amending an act, made in the twenty-sixth year of his present Majesty's reign*, for the encouragement of the southern whale fishery, and for making further provisions for that purpose, it is, amongst other things, enacted, That the several additional premiums granted by that act shall be paid in such and the like manner, and under such and the like conditions, rules, regulations, and restrictions, as are directed and prescribed in and by the said act, made and passed in the twenty-sixth year of the reign of his present Majesty, intituled, *An act for the encouragement of the southern whale fishery*: And whereas it is expedient that provision should be made

to oblige the masters of ships or vessels, or the persons to whom apprentices shall be bound in pursuance of the acts hereinbefore respectively recited, to keep such apprentices in their service for the time they shall be indentured: Be it therefore further enacted by the authority aforesaid, That, from and after the first day of *January* one thousand seven hundred and ninety, if the master of any ship or vessel, or any other person or persons whatever, to whom any apprentice or apprentices shall be indentured pursuant to the said herein-before recited acts, shall permit or suffer any such apprentice or apprentices to quit, leave, or depart, his or their service on any pretence whatever, except as herein-after is provided, before the expiration of the term for which he or they shall be bound, every such master or other person shall forfeit and pay, for each and every offence, the sum of fifty pounds; to be recovered by action of debt, bill, plaint, or information, in any of his Majesty's courts of record, in which no wager of law, no effoin, nor any more than one imparlance, shall be allowed.

After Jan. 1, 1790, any master permitting an apprentice, indentured pursuant to the recited acts, to quit his service before the expiration of his term, to forfeit 50*l*.;

6. Provided nevertheless, That nothing herein contained shall extend, or be construed to extend, to inflict the aforesaid penalty in any case where any apprentice or apprentices shall be legally discharged before a magistrate or justice of the peace,

unless such apprentice be discharged before a magistrate, or turned over to another master, in the said fisheries.

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or

or shall be turned over from one person to another person, concerned in either of the aforesaid fisheries, to serve the remainder of his time in such fisheries, pursuant to the directions of the said acts herein-before recited.

No premium to be paid under the recited acts, unless the names of the ships on board which apprentices are bound to serve, be inserted in the indentures.

7. Provided also, and it is hereby declared, That no bounty or premium shall be paid or allowed by virtue of the said recited acts, or either of them, in any case, unless there shall be inserted in the indenture or indentures of each and every apprentice or apprentices, who shall be indentured by virtue of the said recited acts, or either of them, or who shall be turned over from one person to another, pursuant to this act, the name or names of the ship or vessel, or ships or vessels, on board of which such apprentice or apprentices is or are bound to serve.

This act not to extend to ships cleared out, and which shall have sailed, before the commencement thereof.

8. Provided also, That nothing in this act shall extend, or be construed to extend, to take away any bounty or premium which may become due by virtue of the said recited acts, or either of them, in any case where the ship or vessel shall have *bona fide* cleared out on the fishery, and proceeded from *Great Britain*, before the commencement of this act.

31 GEO. III. Cap. 29.

An act for establishing a court of civil jurisdiction in the island of Newfoundland, for a limited time.

WHEREAS, by an act, passed in the fifteenth year of his present Majesty's reign, intituled, *An act for the encouragement of the fisheries carried on from Great Britain, Ireland, and the British dominions in Europe, and for securing the return of the fishermen, sailors, and others employed in the said fisheries, to the ports thereof, at the end of the fishing season,* it was, amongst other things, enacted, That all disputes which should arise concerning the wages of every and any such seaman or fisherman, and all offences which should be committed by every hirer or employer of such seaman or fisherman against that act, should and might be enquired of, heard, and determined; and the penalties and forfeitures thereby incurred should and might be recovered in the court of session in the said act mentioned, or in the court of vice admiralty having jurisdiction in the island of Newfoundland: And whereas, by another act, passed in the twenty-sixth year of the reign of his present Majesty, intituled, *An act to amend and render more effectual the present laws now in force for encouraging*

Preamble.

15 Geo. III,
cap. 31,

and 26 Geo.
III, cap. 26,
recited.

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the fisheries carried on at Newfoundland, and parts adjacent, from Great Britain, Ireland, and the British dominions in Europe; and for granting bounties, for a limited time, on certain terms and conditions; so much of the said first-mentioned act, as gives any jurisdiction to the court of vice-admiralty for the said island of *Newfoundland*, with respect to inquiring, hearing, and determining disputes concerning the wages of any seaman or fisherman, or any offence committed by any hirer or employer of such seaman or fisherman, or any controversies or differences arising from their contracts or agreements, should be, and the same was thereby repealed: And whereas the provisions made by the said first-mentioned act, for the administration of justice in civil cases, are insufficient, and it is highly expedient that a court of civil jurisdiction, having cognizance of all pleas of debt, account, contracts respecting personal property, and all trespasses against the person, goods, or chattels, should be established in the said island of *Newfoundland*, for a limited time; be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That it shall and may be lawful for his Majesty, by his commission under the great seal, to institute a court of civil jurisdiction, with full power and authority

His Majesty
may constitute
a court of civil
jurisdiction at
Newfoundland,
&c.

thority to hear and determine, in a summary way, all pleas of debt, account, contracts respecting personal property, and all trespasses committed against the person or goods and chattels in the island of *Newfoundland*, and islands and parts adjacent, or on the banks of the said island of *Newfoundland*; which court shall consist of a chief judge, to be appointed by his Majesty, and two assessors, to be appointed by the governor of the said island, from time to time; which chief judge, together with any one of such assessors, shall have full power and authority to hear and determine all pleas by this act cognizable by the said court of civil jurisdiction; and shall have such clerks, and other ministerial officers, as the chief judge shall think proper to appoint; and that such salaries shall be paid to the chief judge aforesaid, as his Majesty, his heirs and successors, shall approve and direct; and such salaries be paid to the assessors, and to the clerks, and ministerial officers aforesaid, as shall be approved by the said chief judge, with the consent of the governor of the island of *Newfoundland*; which several salaries shall respectively be in lieu of all other profits and emoluments whatever; and such court shall be a court of record, and shall have all such powers as by the law of *England* are incident and belonging to a court of record; any thing in the said first-men-

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tioned act contained to the contrary notwithstanding.

The manner
in which the
court is to
proceed.

2. And be it further enacted, That the said court shall proceed by complaint in writing, and by summons of the defendant, in all cases where the complaint is for a sum under five pounds; and by arrest of the defendant, and attachment of his goods and debts, or of his effects in the hands of any other person, where the complaint is for more than the sum of five pounds; and such court shall have power and authority to pass judgement, and give costs, in such pleas, and award execution, either by levy and sale of the goods and chattels, or arrest of the person of the plaintiff or defendant, and also of the goods, debts, and effects of the defendant so attached.

An appeal to
his Majesty in
council may be
made, where
judgement is
given for more
than 100*l*.

3. Provided always, That in all pleas, where the sum for which judgement shall be given shall amount to more than one hundred pounds, it shall be lawful for the plaintiff or defendant, as the case may be, to appeal to his Majesty in council, and upon notice of such appeal being signified to the chief judge of such court, within fourteen days after such judgement passed, and security given, to the satisfaction of the said chief judge, for prosecuting such appeal, the execution of such judgement shall be stayed.

4. And

4. And be it further enacted, That during the time the governor of the said island shall continue to be resident in the said island, or parts adjacent, no disputes which shall arise concerning the wages of any seaman or fisherman shall be heard and determined in the court of session mentioned in the said first-mentioned act, but only in the court of civil jurisdiction which shall be instituted by virtue of this act.

While the governor is resident, disputes concerning seamen's wages to be heard only in the court of civil jurisdiction ;

5. Provided always, That nothing in this act contained shall extend to prevent the court of session aforesaid from hearing and determining such disputes as aforesaid, when the governor shall not be resident in the said island, or parts adjacent.

when he is not resident, they may be heard in the court of session.

6. And be it further enacted, That no suit shall be commenced in the said court of civil jurisdiction where the cause of action shall have arisen more than two years before such commencement, nor shall be heard and determined in the said court of civil jurisdiction, except during the residence of the governor within the limits of his government ; and that this act shall commence from the tenth day of *June* one thousand seven hundred and ninety-one, and shall have continuance for one year, and unto the end of the then next session of Parliament.

Limitation of actions.

Continuance of act.

32 GEO. III. Cap. 46.

An act for establishing courts of judicature in the island of Newfoundland, and the islands adjacent.

Preamble.

His Majesty, under the great seal, may institute a court of criminal and civil jurisdiction at Newfoundland, &c.

FOR the better administration of justice in the island of *Newfoundland*, and the islands adjacent; be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That it shall and may be lawful for his Majesty, by his commission under the great seal, to institute a court of criminal and civil jurisdiction, to be called, *The supreme court of judicature of the island of Newfoundland*, with full power and authority to hold plea of all crimes and misdemeanors committed within the island of *Newfoundland*, and on the islands and seas to which ships or vessels repair from the island of *Newfoundland*, for carrying on the fishery, and on the banks of *Newfoundland*, in the same manner as plea is holden of crimes and misdemeanors committed in that part of *Great Britain* called *England*, and also with full power and authority to hold plea, as herein-after mentioned, of all suits and complaints of a civil nature, arising within the island of *Newfoundland*, and on the islands and seas aforesaid, and on the banks of *Newfoundland*; which court

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court shall determine such suits and complaints of a civil nature, according to the law of *England*, as far as the same can be applied to suits and complaints arising in the islands and places aforesaid; and the said court shall be a court of record, and shall be holden by a chief justice to be appointed by his Majesty, who shall have full power and authority to enquire of, hear, and determine all crimes and misdemeanours, suits, and complaints, cognizable in the said court; and such court shall have such clerks and ministerial officers as the chief justice shall think proper to appoint; and such salary shall be paid to the said chief justice, as his Majesty, his heirs and successors, shall approve and direct, and such salaries be paid to the clerks and ministerial officers aforesaid, as shall be approved by the chief justice, with the consent of the governor of the island of *Newfoundland*; which several salaries shall respectively be in lieu of all other profits and emoluments whatsoever.

2. And be it further enacted, That it shall be lawful for the governor of the island of *Newfoundland*, with the advice of such chief justice, from time to time, to institute courts of civil jurisdiction, to be called *surrogate courts*, in different parts of the island of *Newfoundland*, and the islands aforesaid, as occasion shall require, with full power and authority to hear and determine, in the like summary way, all suits and

The governor, with the advice of the chief justice, may institute surrogate courts, etc.

and complaints of a civil nature arising within the island of *Newfoundland*, and on the islands and seas aforesaid, and on the banks of *Newfoundland*; which courts shall respectively be courts of record, and shall determine according to the law of *England*, as far as the same can be applied to suits and complaints arising in the islands and places aforesaid; and the said courts respectively shall be holden by a surrogate, to be appointed from time to time by the governor of the said island, with the approbation of such chief justice, and shall have full power and authority to hear and determine all suits and complaints cognizable in the said court; and the said court shall have such clerks and ministerial officers, with such salaries as the chief justice shall appoint, which salaries shall be in lieu of all profits and emoluments whatever.

Mode of proceedings in the supreme and surrogate courts.

3. And be it further enacted, That it shall be lawful for the said supreme courts and surrogate courts respectively, when any suit or complaint shall be depending therein, to cause to appear from day to day, all persons interested in the matter in dispute, and to examine upon oath such of them as it shall be deemed proper, for better discovering the truth, and thereupon, and after due consideration of all circumstances, to make such order, judgement, or decree therein, and award such damages and costs, as the case shall require; and that in all cases where the cause of any suit

suit or complaint shall not exceed five pounds, the party who is to answer such suit or complaint shall be made to appear in court by summons, and in all cases where such summons shall be disobeyed, or where the cause of any suit or complaint shall exceed five pounds, then that the party who is to answer such suit or complaint may be caused to appear by attachment of his or her goods, debts, or effects, or by arrest of the person, and that the execution of any order, judgement, or decree may be enforced by attachment of the goods, debts, or credits of the party, or by arrest of the person against whom such order, judgement, or decree shall be made; and that it shall and may be lawful for the said chief justice and surrogates respectively, to authorize some person in his or their absence respectively, to issue process, and do all acts appertaining to the said supreme court, and surrogate courts respectively, save and except the enquiring of, hearing, and determining of any crime or misdemeanor, or any suit or complaint of a civil nature.

4. And be it further enacted by the authority aforesaid, That, where the cause of action shall exceed the sum of ten pounds, and it shall be prayed by the defendant in such suit or complaint, that a jury may be summoned to try such action, it shall be lawful for the said chief justice and surrogates respectively, and he and they are hereby

In actions exceeding 10*l*. jurors may be summoned, but if a sufficient number should not appear, two assessors with the chief justice or surrogate, may proceed to trial.

hereby respectively required to cause twenty-four persons to be summoned, of whom twelve shall be a jury for the trial of such action, and to proceed therein according to law: Provided always, That, if a number of jurors sufficient for the trial of such action having been duly summoned shall not appear to be sworn, it shall and may be lawful for the governor of the said island, and the surrogates in their several courts respectively, to nominate and appoint two proper persons to be assessors to the said chief justice, who, together with the said chief justice or surrogates respectively, shall proceed to the trial of such action, in like manner as if such jury had not been prayed.

Appeals may be made from judgements for sums exceeding 40 l. in the surrogate court, and exceeding 100 l. in the supreme court.

5. And be it further enacted, That upon any decree or judgement given in a surrogate court, for any sum exceeding forty pounds, it shall be lawful for the party against whom such decree or judgement shall be given, to appeal therefrom to the supreme court, having first given notice of such intention, and having entered into a security to the surrogate, in double the sum for which such judgement or decree was given or made, within two days after making or giving such judgement or decree, for duly prosecuting such appeal; and upon any decree or judgement given in the supreme court, for any sum exceeding one hundred pounds, it shall be lawful for the party, against whom such decree or judgement

judgement shall be given or made, to appeal therefrom to his Majesty in council, having first given notice of such intention, and having entered into security, to be approved by the chief justice, in double the sum for which such judgement or decree was given or made, within two days after the giving or making of such judgement or decree, for duly prosecuting such appeal; and in all cases of appeal, as soon as notice shall be given, and security entered into as aforesaid, execution shall be stayed, but not otherwise.

6. And whereas it will greatly contribute to the advancement of the trade and fishery of *Newfoundland*, if such effects as persons becoming insolvent in the said island of *Newfoundland*, and the islands aforesaid, were possessed of or entitled unto, within the said island, or on the islands or seas aforesaid, or on the banks of *Newfoundland*, should be divided among their creditors with more equality than hath hitherto been practised; be it further enacted, That, as often as the goods, debts, and credits of any person shall be attached, and it shall be made appear to the court out of which the process of attachment hath issued, that the goods, debts, and credits so attached are not sufficient to pay twenty shillings in the pound to all those who shall be creditors by reason of debts contracted within the island of *Newfoundland*, and on

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When goods are attached, if it shall appear that the party is insolvent, the court shall order his effects to be collected and distributed.

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the islands and seas aforesaid, or on the banks of *Newfoundland*, it shall be lawful for such court to summon the party whose goods, debts, and credits are so attached, together with the plaintiff or plaintiffs who have sued out any attachment, and also such persons who are known to be creditors as aforesaid of the defendant, to appear in court at a certain day, and if upon a due examination of the defendant, and the said creditors, it shall appear that he or she is insolvent, the court shall declare him or her insolvent accordingly, and shall immediately proceed to take order for discovering, collecting, and selling the effects and debts of such person, and distributing the produce thereof rateably amongst all the said creditors of such person so declared insolvent, or to authorize some person or persons, being a creditor or creditors, to perform the same, such person or persons first entering into a recognizance in such sum as the court shall think fit, for the due performance of his or their duty therein; and that such court shall from time to time make such order therein as shall be deemed proper, for better discovering, collecting, and selling the effects and debts, and making a rateable distribution thereof among the said creditors.

Directions for
the distribu-
tion of the
effects of in-
solvent per-
sons.

7. And be it further enacted, That in the distribution to be made of the estate and effects of such person so declared insolvent,

solvent, every fisherman and seaman employed in the fishery, who shall be a creditor for wages become due in the then current season, shall first be paid twenty shillings in the pound, so far as the effects will go; and in the next place, every person who shall be a creditor for supplies furnished in the current season, shall be paid twenty shillings in the pound; and lastly, the said creditors for supplies furnished in the then current season, and all other creditors whatsoever, shall be paid equally in proportion, as far as the effects will go, provided that the said creditors for supplies furnished in the then current season shall not be paid more than twenty shillings in the pound on the whole of their debt.

8. And be it further enacted, That if such insolvent person shall make a true disclosure and discovery of all his or her goods and effects whatsoever, and shall conform him or herself to the order and direction of the said court, the same shall and may (with the consent of one half in number and value of his or her creditors) be certified by the said court, and such certificate, when pleaded, shall be a bar to all suits and complaints for debts contracted within the island of *Newfoundland*, and on the islands and seas aforesaid, and on the banks of *Newfoundland*, prior to the time when he or she was declared insolvent.

Certificate of the court to be a bar to suits for debt prior to the declaration of insolvency.

9. And

Suits, where
the cause shall
arise before
Aug. 1, 1792,
to be com-
menced with-
in six years.

9. And be it further enacted, That where any cause of action shall have arisen before the first day of *August* one thousand seven hundred and ninety-two, no suit or complaint shall be commenced thereon at the distance of more than six years from the time when such cause of action arose.

10. And be it further enacted, That the said chief justice, or any person or persons appointed by him for that purpose, under his hand and seal, shall have power to grant administration of the effects of intestates, and the probate of wills; and that the effects of deceased persons shall not be administered within the island of *Newfoundland*, or on the islands and seas aforesaid; or on the banks of *Newfoundland*, unless administration thereof, or probate of wills respecting the same, shall have been duly granted by such authority as aforesaid.

31 *Geo. III,*
cap. 29, con-
tinued till the
opening of the
supremecourt.

11. And be it further enacted, That an act passed in the last session of Parliament, intituled, *An act for establishing a court of civil jurisdiction in the island of Newfoundland, for a limited time*, which act was to have continued in force from the tenth day of *June* one thousand seven hundred and ninety-one, for one year, and unto the end of the then next session

of Parliament, shall be and continue in force until the opening of the supreme court instituted by virtue of this act, and no longer; and every suit or complaint which shall at that time be depending in the said court of civil jurisdiction, shall and may be proceeded upon in the said supreme court, in the same manner as any suit or complaint originally commenced in the said supreme court.

12. And be it further enacted, That it shall not be lawful for any court in the island of *Newfoundland*, or islands aforesaid (except the supreme court and the surrogate courts appointed by virtue of this act) to hold plea of any suit or complaint of a civil nature, any law, custom, or usage, to the contrary notwithstanding: Provided nevertheless, that the court of vice admiralty having jurisdiction in the said island, shall and may hold plea of maritime causes (except only the wages of seamen and fishermen, which are to be heard and determined in manner herein-after directed), and causes of the revenue, as heretofore practised and used: Provided also, that all disputes which shall arise concerning the wages of any seaman or fisherman, and all offences which shall be committed by any hirer or employer of such seaman or fisherman, against this or any other act, relating to the island of *Newfoundland*, or the islands and seas aforesaid, or the fishery thereof, shall and may be heard and determined, and the penalties

No court, except the supreme and surrogate courts, to hold pleas of a civil nature.

Vice admiralty court may hold plea of maritime causes (except for wages), and causes of revenue.

Disputes respecting wages of seamen, &c. may be heard in the court of sessions, or before two justices.

and forfeitures thereby incurred shall and may be recovered in the court of sessions, or before any two justices of the peace.

Suits for debts not exceeding 40*s.* may be determined in a summary way, &c.

13. Provided also, and be it enacted, That it shall be lawful for the court of session, in a summary way, to hear and determine all suits for the payment of debts not exceeding forty shillings, and not contracted more than one year before the commencement of such suits respectively; and it shall be lawful for the court of session, or such two justices respectively, to award costs therein; and such determination and award shall be final, and shall be carried into execution by attachment and sale of the goods and effects of the party against whom the determination was made.

Chief justice to settle forms of process, and appoint the fees to be taken in the courts, &c.

14. And be it further enacted, That it shall be lawful for the said chief justice to settle such forms of process, and such rules of practice and proceeding, for the conduct of all pleas, suits, and complaints, and for the dispatch of the business of the said supreme court, and surrogate courts, and of the business in the courts of session, or before any one or more justices of the peace respectively, and to appoint such reasonable fees to be taken for the conduct and dispatch of pleas, suits, complaints, and other business as aforesaid, and for the granting administration of the effects of intestates, and for the probate of wills, as shall seem necessary and proper for expediting matters with the most convenience and least expence to the parties concerned therein; and such process, and rules of
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of practice and proceeding, shall be followed and obeyed; and such fees shall be paid accordingly, and no other; and that all such fees received in any surrogate court shall be paid and accounted for by the surrogate in the said supreme court; and that it shall be lawful for the said chief justice, and he is hereby required to settle and limit what fees and poundage shall be taken by the sheriff of *Newfoundland*, and the same shall be taken, and none other.

Fees in surrogate courts to be accounted for in the supreme court.

15. And be it further enacted, That all fines, penalties, and forfeitures, imposed by any act of Parliament made, or which shall hereafter be made, relating to the island of *Newfoundland*, or the fishery thereof, may be recovered in a summary way in the said supreme court, or in any surrogate court; and every penalty and forfeiture of the sum of ten pounds or under, may be recovered in the court of session, or before any one or more justices of the peace; and all fines, penalties, and forfeitures imposed, paid, or levied in any surrogate court, or in any court of session, or before any one or more justices of the peace, shall be forthwith estreated, and paid into the said supreme court by the surrogate, or by the justice or justices of the peace respectively, before whom they were recovered; and it shall be lawful for the said supreme court to issue process for better compelling such justices and surrogates to bring to account all monies which ought to be so paid and accounted for as aforesaid; and all money arising from such fees, fines,

For the recovery and application of penalties.

penalties, and forfeitures shall be applied and appropriated towards defraying the expence of carrying this act into execution.

Limitation
of actions.

16. And be it further enacted, That if any action or suit shall be brought or commenced against any person for any thing done in pursuance of this act, such action or suit shall be commenced within six months next after the matter or thing done; and the defendant in such suit or action may plead the general issue, and give this act and the special matter in evidence at any trial to be had thereupon; and if a verdict shall pass for the defendant, or the plaintiff shall be nonsuited, or discontinue his action after the defendant has appeared, or if judgement shall be given, upon any verdict or demurrer, against the plaintiff, the defendant shall recover treble costs, and have the like remedy for the same as defendants have in other cases by law.


General issue.

Treble costs.

No officer of
the customs
capable of act-
ing as a jus-
tice.

17. And be it further enacted by the authority aforesaid, That no officer whatever, being in the service of his Majesty's customs in the island of *Newfoundland*, shall be capable of acting as a justice of the peace in and for the said island.

Continuance
of this act.

18. And be it further enacted, That this act shall continue in force until the tenth day of *June* one thousand seven hundred and ninety-three, and from thence to the end of the then next session of Parli-


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